

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/22/0983

**Re: Property at 24 Innerwood Road, Kilwinning, KA13 7DX
 (“the Property”)**

Parties:

**Mr Donald Watson, 14 Glenbervie Wynd, Irvine, KA11 4DL
 (“the Applicant”)**

**Ms Lauren Rae, 24 Innerwood Road, Kilwinning, KA13 7DX
 (“the Respondent”)**

Tribunal Members:

**Ms. Susanne L. M. Tanner Q.C. (Legal Member)
 Ms. Mary Lyden (Ordinary Member)**

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”):

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) (i) was satisfied in terms of Section 33 of the 1988 Act that the short assured tenancy for the Property has reached its end; tacit relocation is not operating; no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and the Applicant has given to the Respondent six months’ notice stating that they require possession of the house; (ii) that it was reasonable to make an order for possession in the circumstances of the case; and (iii) made an order for possession in terms of Section 33 of the 1988 Act.

The decision of the tribunal was unanimous.

Statement of Reasons

Procedural Background

1. The Applicant made an application to the tribunal on 1 April 2022 in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”).
2. The Applicant seeks the Respondent’s eviction from the Property under Section 33 of the 1988 Act (possession on termination of a short assured tenancy).
3. The Applicant provided the following documents in support of the Application:
 - 3.1. Short Assured Tenancy Agreement
 - 3.2. AT5 form
 - 3.3. Notice to Quit
 - 3.4. Section 33 Notice
 - 3.5. Execution of Service
 - 3.6. Copy of Section 11 email sent to the local authority, and
 - 3.7. Consent letter from Mrs Karen Watson.
4. On 6 April 2022 the tribunal’s administration obtained a copy of the Title Sheet for the Property which showed the Applicant as one of the joint registered proprietors of the Property.
5. On 21 April 2022 the tribunal requested further information from the Applicant. The Applicant produced written authorisation from Mrs Karen Watson, the joint registered proprietor, that the application could be made and progressed on her behalf; and written representations in relation to the reasonableness of an order for possession.
6. The Application was accepted for determination by the tribunal. A Case Management Discussion (“CMD”) teleconference was fixed for 20 July 2022 at 1000h.
7. The tribunal sent letters of notification to all parties dated 7 June 2022 with the date, time and arrangements for joining the Case Management Discussion (“CMD”) in relation to the Application. The Respondent was invited to make written

representations in response to the Application by 28 June 2022. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this would not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

8. Service of the Application paperwork and notice of the CMD on the Respondent at the Property by Sheriff Officers was successful.
9. The Respondent did not submit any representations in the specified time period.

CMD: 20 July 2022, 1000h, Teleconference

10. The Applicant attended with his wife, Karen Watson, as supporter.
11. The Respondent did not attend. The tribunal was satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing have been duly complied with and proceeded with the application upon the representations of the party present, in term of Rule 29.

Applicant's submissions

12. The Applicant referred to the Application and supporting documents in relation to the order for possession sought on termination of the short assured tenancy.
13. In relation to reasonableness of an order for possession, the Applicant referred first to rent arrears, which currently stand at £2532.00. He stated that they had to keep chasing Ms Rae via her mum (who is a family friend) in order to clear things off. He stated that Ms Rae would not respond to any texts or phone calls. He stated that they offered support in the form of time to pay the arrears. He stated that the arrears were paid off in January 2022 after contact with Ms Rae's mum but that Ms Rae has not paid any rent since that time. The tenancy began in November 2015. The rent arrears have existed throughout the tenancy. Ms Rae went onto universal credit around 29 July 2022. The £41.15 that was paid back and forward was for rent arrears that she already had. When she came off universal credit, he believes that was because she was working. The rent arrears are £2532.00 to 19 July 2022 and they are being sought in the related civil application. The Applicant stated that the lack of rent has caused them problems. He stated that it has been well maintained during Ms Rae's tenancy and that

there has been a new roof, a new kitchen and a new bathroom. He stated that they have lending that they need to pay monthly using the rent money.

14. He stated that he was in contact with Ms Rae around three weeks ago and she told him that she had been offered a house by North Ayrshire Council at the end of July and that she would be taking it. He stated that his wife had asked Ms Rae about the rent arrears that Ms Rae said that would be sorted when she moves. He stated that Ms Rae has not been in contact since then. The Applicant stated that Ms Rae lives in the property with two children, whom he thinks are 6 and 10 years old.
15. The Applicant further stated that it is still their intention to sell the property when Ms Rae moves out. The home report was carried out because Ms Rae and her mum indicated that they may buy it if it goes up for sale. The Applicant stated that they are going ahead to sell it on the open market.
16. The Applicant submitted that for all of the above reasons it would be reasonable for the tribunal to make an eviction order.

17. The tribunal makes the following findings-in-fact:

- 17.1. The Applicant is one of the registered proprietors of the Property.
- 17.2. There is a short assured tenancy between the Applicant and the Respondent.
- 17.3. The start date of the tenancy was 25 November 2015.
- 17.4. Rent is payable at the rate of £450.00 per calendar month on the 25th day of each month.
- 17.5. A Notice to Quit and Section 33 Notice dated 16 September 2021, were served on the Respondent by Sheriff Officers on 21 September 2021.
- 17.6. The short assured tenancy reached its end on 25 March 2022 by service on behalf of the Applicant on the Respondent, on 21 September 2021, of a Notice to Quit, notifying the Respondent that the tenancy would reach its termination date as at 25 March 2022.
- 17.7. Tacit relocation is no longer operating;
- 17.8. No further contractual tenancy is for the time being in existence.

- 17.9. The Applicant has given the Respondent at least six months' notice that he requires possession.
- 17.10. The Application to the tribunal was made on 1 April 2022.
- 17.11. As at 19 July 2022, the Respondent is in arrears of rent of £2,532.00.
- 17.12. There have been rent arrears since in or around 1 February 2022.
- 17.13. The Applicant and the co-proprietor have been required to meet property outgoings since on or about 1 February 2022, in the absence of rent from the Respondent.
- 17.14. The Applicant and the co-proprietor intend to sell the Property on the open market once they have vacant possession.
- 17.15. The Respondent has been offered a local authority property for her and her children to reside in, with an entry date on or about 31 July 2022 and she intends to accept the alternative property.

18. Findings in fact and law

- 18.1. The tribunal is satisfied that the facts required in Section 33 of the 1988 Act have been established.
- 18.2. The tribunal is satisfied it is reasonable to make an order for possession.

Discussion

19. The order for possession is sought in terms of Section 33 of the 1988 Act. The tribunal was satisfied that the requirements of Section 33 have been met.
20. In relation to reasonableness, reference is made to the tribunal's findings in fact. The tribunal was satisfied that there are rent arrears as at 19 July 2022 in the sum of £2,532.00 and that the Respondent has made no proposals to repay any of the arrears. The Respondents are required to meet property outgoings in the meantime. The Respondent and her children have been offered local authority accommodation from the end of July 2022 and she intends to take the offer. The Applicant wishes to sell the Property with vacant possession on the open market. The Respondent has not opposed the application for possession.

21. The tribunal was satisfied that it was reasonable to evict the Respondent in the circumstances of the case.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

20 July 2022

Ms. Susanne L. M. Tanner Q.C.
Legal Member/Chair