



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)**

**Chamber Ref: FTS/HPC/EV/22/3343**

**Property at 7 Culbard Street, Elgin, Morayshire, IV30 1JT (“the Property”)**

**Parties:**

**Mr Steven Smith, 6 Tudor Court, Caergeiliog, Holyhead, Gwynedd, LL65 3LL (“the Applicant”)**

**Mr Adam Krajewski, 7 Culbard Street, Elgin, Morayshire, IV30 1JT (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicant.**

**Background**

- 1. The Applicant seeks an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). A short assured tenancy agreement, supplementary agreement, AT5 notice, copy Notice to Quit, Section 33 Notice, Royal Mail track and trace report and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 were lodged in support of the application.**
- 2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 24 January 2023 at 10am and that they were required to participate. Both were provided with a**

telephone number and passcode. Prior to the CMD the Applicant lodged an updated rent statement. The Respondent lodged written submissions which stated that the rent arrears had arisen during the pandemic because of health issues which affected employment and caused financial problems. Alternative accommodation has been secured and the keys for the property would be returned at the end of January.

3. The CMD took place by telephone conference call on 24 January 2023 at 10am. A related application for a payment order was also discussed. The Applicant was represented by Ms Matthew, trainee solicitor. The Respondent participated, accompanied by his partner, and represented by Ms Hayward. An interpreter was also present.

### **Case Management discussion**

4. Ms Hayward told the Tribunal that the Respondent moved into his new accommodation on 20 January 2023 and intended to return the keys for the property on 27 January 2023, after the property has been cleaned. She stated that the Respondent does not oppose the application if the eviction order is still sought. Ms Hayward said that the Respondent is working but his partner has recently had to give up her job due to lack of childcare. This has had an impact on the family finances. The couple have a 2-year-old child. There have also been health issues which have had an adverse impact on their income. However, the family has now secured accommodation from the Local Authority and intend to return the keys for the property.
5. Ms Matthew told the Tribunal that an eviction order is still sought by the Applicant. She said that the rent arrears currently stand at £1850. Arrears of rent have been a long running problem although the Respondent is currently meeting his rent charge and paying an additional £50 per month towards the arrears. At this rate it will take 2 years for the arrears to be repaid. Ms Matthew also said that the Applicant has a mortgage over the property and has been struggling to meet the repayments because of the rent arrears and the rising cost of living. Pre Action letters were issued to the Respondent, but he did not start to address the arrears until the application for possession was served on him. Ms Matthew concluded by stating that the Respondent would not be prejudiced by the order being granted if he intended to return the keys and had already moved into alternative accommodation.

### **Findings in Fact**

6. The Applicant is the owner and landlord of the property.
7. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.

8. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 26 February 2022.
9. The Respondent has been in arrears of rent since October 2021 and currently owes the sum of £1850 in unpaid rent.
10. The Respondent has a partner and 2 year old child.
11. The Respondent and his family have secured alternative accommodation from the Local Authority.

### **Reasons for Decision**

12. The application was submitted with a short assured tenancy agreement, supplementary agreement and AT5 Notice. The initial term of the tenancy was six months from 28 April 2017 until 27 October 2017, with a provision that it continued on a month to month basis thereafter. The supplementary agreement is for the initial period of 12 months from 27 April 2020 until 27 April 2021. Otherwise, the terms and conditions specified in the principal agreement continue to apply.
13. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
14. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that AT5 Notice was given to the Respondent prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
15. From the documents submitted with the application, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondent on 26 February 2022. The Notice to Quit called upon the Respondent to vacate the property on 27 August 2022, an ish date. The Notice contains the information prescribed by the Assured tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 26 February 2022 and gave the Respondents 6 months’ notice that the Landlord wished to recover possession

of the property. A Section 11 Notice was submitted with the application, with evidence that it sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.

16. The version of Section 33 of the 1988 Act, as amended by the Coronavirus (Scotland) Act 2020, which applied at the date of service of the Notices on the Respondent states “(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its finish; (b) that tacit relocation is not operating; (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and (e ) that it is reasonable to make an order for possession” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period; (ii) in any other case, six months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondent, giving at least six months’ notice that the Applicant required possession of the property.
17. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.
18. The Tribunal noted the following: -
  - (a) The Respondent stated that he has secured alternative accommodation and does not oppose the application. He has not returned the keys for the property but intends to do so.
  - (b) The Respondent has a partner and two year old child. However, they are not at risk of being homeless as alternative accommodation for the family unit has been secured.
  - (c) The Respondent has incurred rent arrears of £1850. He is currently meeting the rent charge and making payments of £50 per month to the arrears.
  - (d) The Applicant states that the rent arrears have had an adverse impact on his ability to meet mortgage payments.
  - (e) The tenancy has not yet been terminated by the Respondent.
19. Although the Respondent has secured alternative accommodation, the tenancy has not yet been terminated. The Tribunal is therefore satisfied that the Applicant is entitled to seek an order for possession and that it is reasonable in the circumstances that the order be granted.

## **Decision**

20. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

## **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.**

**Josephine Bonnar, Legal Member**

**24 January 2023**