



**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**

Chamber Ref: FTS/HPC/EV/22/4059

**Re: Property at Cawdor, 20 Craigmill Road, Bridgefoot, Dundee, DD3 0PH (“the
Property”)**

Parties:

**Raynor Holdings Limited, Craigmill House, Bridgefoot, Dundee, DD3 0PH (“the
Applicant”)**

**Miss Angela Carr, Cawdor, 20 Craigmill Road, Bridgefoot, Dundee, DD3 0PH
 (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an eviction order**

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the parties dated 16 June 2015 and 18 June 2015 together with Form AT5 dated 8 June 2015 and signed acknowledgement by the Respondent dated 9 June 2015;
 - (ii) Notice to Quit dated 24 August 2022 together with proof of service by Sheriff Officers;

- (iii) Notice under section 33 of the Housing (Scotland) Act 1988 dated 24 August 2022 together with proof of delivery by Sheriff Officers;
 - (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003 to the local authority; and
 - (v) Copy letter from the Applicant's agent to the Respondent outlining the reasons for service of the Notice to Quit and section 33 Notice.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was assigned for the 22nd March 2023 to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers.

Case Management Discussion

- 3 The Case Management Discussion took place by teleconference on 22 March 2023. The Applicant was represented by Ms Carla Kelly. The Respondent was not present. The Tribunal noted that she had been served with the application paperwork together with notification of the date and time of the Case Management Discussion and determined to proceed in her absence.
- 4 The Tribunal explained the purpose of the Case Management Discussion and the legal test, and asked Ms Kelly to address it on the Applicant's position.
- 5 Ms Kelly advised that the Applicant sought an eviction order. The main concern was the condition of the property. Around 2 years ago the Respondent had put a static caravan in the garden of the property, right up the side of the house. The property was a cottage in a small village. The presence of the caravan was a fire hazard and upset the neighbours. The caravan had since been cut up into sections that contained asbestos which resulted in complaints from neighbours.
- 6 Ms Kelly explained that in addition to the issues with the caravan the gardens pertaining to the property were full of rubbish. Internally there were no doors in the house, the kitchen was in a terrible condition, wallpaper was hanging off and there was writing on the walls. New windows had been installed and these had been damaged. A new UPVC door was also damaged and floor coverings had been lifted. Ms Kelly confirmed that she had last carried out an inspection of the property in August 2022. Since then the Respondent had generally failed to respond to attempts at contact, other than sending some verbally abusive emails late at night. The Applicant had sent letters by

recorded delivery mail, had contacted the Respondent by phone and had sent emails, all to no avail.

- 7 Ms Kelly confirmed that the Applicant's office was across the road from the property and she and her colleagues passed it on a daily basis. There had been no improvement. The gardens were still a mess and rubbish was piled up along the front of the house. There were old mattresses lying at the end of the drive. Because the property was located in a small town, everybody knew that it was let by the Applicant and she and her colleagues received regular phone calls complaining about its condition.

- 8 Ms Kelly further advised that the Respondent had been in rent arrears at various stages during her tenancy. She had last defaulted on her rent payments in August last year. The Applicant had managed to apply for universal credit, and was now being paid directly however it had not been possible to receive a backdate for all money the Respondent owed. The Applicant was now receiving universal credit which covered the rent bar £5. They were also receiving £33.49 towards the arrears every month.

- 9 Ms Kelly confirmed that the Respondent had been in touch with the local authority regarding alternative accommodation. They had advised that she should remain in the property until such time as an eviction order was granted. Ms Kelly believed she had seen council staff attending the property, but she had never had contact from them directly. Ms Kelly confirmed that the Respondent was the sole tenant, albeit she had lived with different partners over the term of the tenancy. The Respondent resided with an adult son and daughter. Ms Kelly had thought that another male in his late teens had been living in the static caravan for a period but couldn't say for sure. The Respondent also had a dog for which she had not received permission from the Applicant. Ms Kelly confirmed that the Applicant was a limited company with two Directors. It had a portfolio of 70 properties and this was the first time in 20 years that proceedings had been raised for an eviction order. Ms Kelly felt the Applicant was a fair landlord.

Relevant Legislation

- 10 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

“33 Recovery of possession on termination of a short assured tenancy.

(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 ish;

b) that tacit relocation is not operating; and

(c)

(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.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) 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.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”

The Cost of Living (Tenant Protection) (Scotland) Act 2022 is also relevant to this application, it having been received by the Tribunal after 28 October 2022.

Findings in Fact and Law

- 11 The Applicant entered into a Short Assured Tenancy Agreement with the Respondents which commenced on 2 July 2015 for a period until 1 July 2016 and monthly thereafter.
- 12 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 13 On 25 August 2022 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 1 November 2022 and a Notice to Quit to the Respondent which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form. The Notices were served by recorded delivery mail.

- 14 The Notice to Quit terminates the tenancy as at 1 November 2022 which is a valid ish date.
- 15 The Respondent has allowed the condition of the property to decline through wilful acts or neglect.
- 16 The Respondent has placed a static caravan in the garden of the property without the permission of the Applicant.
- 17 The Respondent keeps a dog in the property without the permission of the Applicant.
- 18 The Respondent has accrued rent arrears in the sum of £1194.04. The Applicant receives payment from universal credit of £33.49 per month towards said arrears.
- 19 The Applicant receives universal credit directly to the rent account. There is a shortfall of £5 per month between the universal credit payments and the monthly rent.
- 20 The Respondent resides in the property with her adult son and daughter.
- 21 The Applicant has a portfolio of 70 properties. The present application is the first made by the Applicant for an eviction order in twenty years of letting.
- 22 It is reasonable to make the order sought by the Applicant.
- 23 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

Reasons for Decision

- 24 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved. The Respondent had been given the opportunity to participate in the proceedings but had failed to do so.

- 25 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 26 The Tribunal noted the amount of properties within the Applicant's portfolio and the fact that this was the first time the Applicant had raised proceedings for repossession during the 20 years it had been operating. The Tribunal therefore concluded that this was not a decision the Applicant had taken lightly. Taking into account the description of the decline in the condition of the property it was clear that the Respondent was failing to comply with the obligations incumbent upon her to ensure that the property was maintained to a reasonable standard. As a result of the Respondent's conduct the Applicant was facing regular complaints from neighbouring residents who were understandably frustrated with having to live next to the property in its current state. The Applicant would also likely have to invest considerably in bringing the property back up to a lettable standard. When considered alongside the Respondent's accrual of rent arrears at various stages during the tenancy and her actions in keeping a dog within the property without the required permission, this presented a general disregard by the Respondent of her tenancy obligations which was having an ongoing impact on the Applicant.
- 27 The Tribunal also had cognisance of the fact that the Respondent had sought assistance from the local authority in obtaining alternative housing. Furthermore, whilst Ms Kelly was unable to confirm unequivocally who was residing in the property, the Tribunal concluded that this was due to the Respondent's failure to engage when asked for this information. It was clear that the Applicant had made numerous attempts to contact the Respondent to no avail. There was no information before the Tribunal to contradict the position put forward by Ms Kelly which the Tribunal found to be straightforward and credible, therefore having balanced the particular facts and circumstances of this case the Tribunal concluded that it would be reasonable to make an eviction order.
- 28 It should be noted that this was an application to which the Cost of Living (Tenant Protection) (Scotland) Act 2022 applies. As at the time of writing this prevents any action being taken to enforce the eviction order prior the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted as specified above, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 which is at the time of writing the 30 September 2023. The Tribunal would therefore suggest the Applicant may wish to seek independent advice regarding the impact of the legislation on the order granted.
- 29 The decision of the Tribunal was unanimous.

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.

22 March 2023

Legal Member/Chair

Date