

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988 (Act)**

**Chamber Ref: FTS/HPC/EV/22/3865**

**Re: Property at 4 Harley Place, Saltcoats, KA21 5TE (“the Property”)**

**Parties:**

**Mr Andrew Wylie, Anne Flannigan Donohoe-Wylie, 5 Bridgepark, Ardrossan, KA22 8BQ (“the Applicant”)**

**Mr Scott Taylor, Miss Laura Lynn, 4 Harley Place, Saltcoats, KA21 5TE (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.**

**Background**

This is an application under section 33 of the Act and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (**Regulations**) in respect of the termination of a Short-Assured Tenancy (**SAT**).

The Tribunal had regard to the following documents lodged in advance of the Hearing:

1. Application received 21 October 2022;
2. SAT commencing 28 July 2016;
3. AT5;
4. Notice to Quit dated 20 January 2022;
5. Section 33 Notice dated 20 January 2022;
6. AT6 dated 20 January 2022;
7. Sheriff Officer Certificate of Service of Notice to Quit, AT6 and Section 33 Notice dated 20 January 2022;

8. Rent Statement as at 7 February 2023;
9. CMD Note dated 16 February 2023;
10. Mortgage rate increase notice (undated);
11. Written Representations from the Applicants by email of 11 May 2023 enclosing letter from the local authority of the same date;
12. Written Representations from the Respondents enclosing SSR and CL Reports and evidence of son's ASD received by email of 17 May 2023.

## **Hearing**

The case called for a Hearing by conference call on 18 May 2023. Both Parties participated and represented themselves.

The Applicants confirmed that they were suffering financial hardship. The Second Named Applicant had lost her job due to ill health. Their mortgage is £499.03 along with building insurance of £25.26 and boiler insurance of £17.99. The rent received on the Property is £550. They have to pay income tax on £506.75 of the rent received in the region of £48.14. This means they are paying out more money each month than they receive. In addition, as landlords there are expenses to pay – repairs, replacements, maintenance as required.

The Applicants have been advised that their mortgage rate has been increased again.

The Applicants produced a letter from North Ayrshire Council dated 11 May 2023 stating the Property does not meet the tolerable standard and requires substantial repairs and maintenance including a new roof - which they are unable to fund.

The Second Named Respondent suffers from asthma and the Property is damp.

The Applicants may lose the Property to the mortgage lender, their credit rating will suffer, their financial stability will suffer (which is already unstable), and this may possibly have a future impact on any financial decisions they want to make.

The Respondents have 3 children aged 4, 10 and 14. The eldest suffers from ASD and any move would have a negative impact on him. He needs structure and stability. They have applied to the local authority and have been on the list since 2015. They did not oppose the application but needed somewhere to move to.

The Second Named Respondent does suffer from asthma and it does appear that the dampness in the Property is having an impact on her health.

The Property is too small for the Respondents and their family.

The Tribunal then considered the eviction application before it.

The Tribunal considered the oral and documentary evidence from the Parties and in so far as material made the following findings in fact:

1. The Parties let the subjects under an SAT commencing 28 July 2016;

2. An AT5 had been served on the Respondent prior to commencement of the SAT;
3. Notice to Quit, AT6 and Section 33 Notice had been served on 20 January 2022;
4. Section 11 Notice had been served on the local authority;
5. The SAT had reached its term and had been terminated;
6. Tacit relocation was no longer operating;
7. No further contractual tenancy was in existence;
8. The Applicants had given the Respondent notice that they required possession;
9. The Applicants were suffering financial hardship. Their mortgage is £499.03 along with building insurance of £25.26 and boiler insurance of £17.99. The rent received on the Property is £550. They have to pay income tax on £506.75 of the rent received in the region of £48.14. This means they are paying out more money each month than they receive. In addition, as landlords there are expenses to pay – repairs, replacements, maintenance as required;
10. The Second Named Applicant had lost her job due to ill health;
11. The Property does not meet the tolerable standard and requires substantial repairs and maintenance including a new roof - which the Applicants are unable to fund;
12. The Second Named Respondent suffers from asthma and the Property is damp;
13. The Respondents have 3 children aged 4, 10 and 14. The eldest suffers from ASD and any move would have a negative impact on him. He needs structure and stability;
14. The Respondents have applied to the local authority and have been on the housing list since 2015;
15. The Respondents did not oppose the application but needed somewhere to move to.

The Tribunal considered all of the evidence and submissions. The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought. The Tribunal had to balance the competing interests of the Parties in all of the circumstances of this case.

It appeared to the Tribunal that the Applicants simply could not afford to keep the Property on. The Property was in a state of disrepair and was having an impact on the health of the Second Named Respondent. The Property was not big enough for the Respondents family. Whilst granting the order would have a negative impact on their son the Tribunal hoped that the grant of an order would give them priority with the local authority for rehousing.

In all of the circumstances the Tribunal determined that it would be reasonable to grant the order sought.

The Tribunal granted the application for eviction and recovery of possession.

### **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.**

**Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.**

**Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.**

**A Strain**

**18 May 2023**

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**Legal Member/Chair**

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**Date**