

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 S33 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/EV/17/0448

**Re: Property at 23 Ardoch Crescent, Stevenston, Ayrshire KA20 3NR (“the
Property”)**

Parties: Mr Simon Clarke, 27 Wedderburn Road, Dunblane, FK15 0FN

(“the Applicant”)

Ms Marion Nicol, 23 Ardoch Crescent, Stevenston, Ayrshire KA20 3NR

(“the Respondent”)

Tribunal Member: Mrs Jan A Todd (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Respondent for possession of the Property under *section 33 of the Housing (Scotland) Act 1988*. **The extract order will be issued to the Applicant after expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.**

The order includes a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

This was a case management discussion to consider the application made by the Applicant dated 1st December 2017 for an order for repossession of the Property in

terms of Rule 66 of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended. The Applicant is the joint owner of the Property and Landlord and he attended the hearing in person along with his wife and joint owner Mrs Joanne Clarke, who by letter dated 8th December 2017, had consented to the application. The Applicant had lodged and the Tribunal had sight and considered the following documents:-

Copy Tenancy Agreement of the Property dated 17th May 2017

Copy AT5 form dated 17th May 2017

S33 notice

Notice to Quit dated 15th September 2017

Certificate of service of Notice to Quit and S33 notice by Sheriff Officers on 15th September 2017.

S11 notice to the Local Authority.

The Case Management Discussion

The Applicant and joint owner Mrs Joanne Clarke attended the case management discussion (CMD). Mrs Clarke attended as a supporter to her husband at the CMD. The Legal Member explained that the purpose of the CMD was to explore the issues and determine how the case could be most effectively resolved. The Respondent, who is the tenant, did not attend the CMD and had made no written representations prior to the CMD despite notice of the CMD and the above documentation being served on her by Sheriff Officers on 21st December 2017. The Respondent was made aware in that documentation served on her that a decision on the application could be made at the CMD. The applicant confirmed he still wished to pursue repossession of the Property although he had heard from others living near the Property that the Respondent may have left the property. He could not verify this as the Respondent had changed the locks on the Property and he could not access the property.

Findings in Fact

1. The Applicant and Respondent have entered into a lease of the Property for a period of 6 months from 17th May 2017.
2. The Applicant is the Landlord and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
3. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
4. The rent is £103.84 per week. The Respondent has only paid 2 weeks rent at the commencement of the tenancy despite numerous requests for payment by the Applicant.
5. The Applicant has served by Sheriff Officers a Notice to quit and S33 notice on the Respondent terminating the contractual tenancy and giving notice that he required possession of the Property by 17th November being the termination date of the tenancy.
6. The Respondent who is the tenant has not vacated the property or responded to the Notice to Quit or S33 notice.
7. The Respondent has been served notice of this application and has made no representations in relation to this Application.

Reasons for Decision

The Applicant confirmed the Respondent had still not paid any rent, that the tenancy had commenced on 17th May 2017 and she has only paid 2 weeks rent in total. He further advised that he had waited before raising any action to see if she was able to claim housing benefit but no further payments have been made. The Applicant has raised an action in the sheriff court for payment of the arrears of rent prior to 1st December 2017.

The Applicant having entered into a Short Assured Tenancy with the Respondent and having served the appropriate forms to terminate the tenancy and to claim repossession all in terms of S33 of the Housing (Scotland) Act 1988, is entitled to repossess the Property. The Tribunal is able to make any order at a case management discussion as it can after a hearing. Considering the Respondent had made no representations and did not attend the hearing, the Tribunal felt it was reasonable and balancing the interests of both parties, appropriate and just to grant a full order for repossession at this case management discussion.

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.

J A Todd

Legal Member/Chair

25th January 2018

Date