



**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/20/2586

Property: 56 Kilmarnock Road, Crosshouse, East Ayrshire KA2 0EY ("Property")

Parties:

Philip Murtagh, 34 Bally Holland road, Newry, County down BT34 2LU ("Applicant")

**Homesure Property Management, Unit 5B, Olympic Business Park, Drybridge
Road, Dundonald KA2 9BE ("Applicant's Representative")**

**Carey Brown, 56 Kilmarnock Road, Crosshouse, East Ayrshire KA2 0EY
("Respondent")**

Tribunal Members:

Joan Devine (Legal Member)

Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber)
("Tribunal") determined that an order for possession of the Property should be
made.**

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Short Assured Tenancy Agreement signed by the Applicant's agent and the Respondent dated 5 August 2016; Notice signed by the Applicant and the Respondent under section 32 of the Housing (Scotland) Act 1988 ("1988 Act") dated 5 August 2016 ("AT5"); Notice to Quit and Notice in terms of section 33 of the 1988 Act both dated 9 April 2020 addressed to the Respondent; post office receipt evidencing delivery on 23 April 2020; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 14 December 2020 and certificate of service by Sheriff Officer evidencing service of the Application on the Respondent on 11 January 2021.

Hearing

A Hearing took place on 9 February 2021 at 10am by conference call. The Applicant was represented by Scott Thomson of the Applicant's Representative. There was no appearance on behalf of the Respondent. The Tribunal asked why an order for possession was sought by the Applicant. Mr Thomson said that the Respondent had been inconsistent with payment of rent since the commencement of the tenancy. He said that the last rent payment had been made in November 2020. He said that the arrears were currently £978.82 with a further rent payment of £350 falling due on 12 February 2021. Mr Thomson told the Tribunal that at the date of service of the Notice to Quit and Section 33 notice the arrears were £850. Mr Thomson said that he had applied for direct payments from Universal Credit without success. The Tribunal asked Mr Thomson if the Respondent had given any reason for non-payment of rent. He said that he had not. The Tribunal asked Mr Thomson if he had been in recent contact with the Respondent. He said that he had attempted to contact the Respondent during January by email and telephone without success. Mr Thomson said that he understood that the Respondent was the sole occupier of the Property. Mr Thomson said that the Applicant wished possession of the Property in order to consider his options as regards whether to re-let the Property or sell it.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement dated 5 August 2016.
2. The Applicant and the Respondent had signed the form AT5 on 5 August 2016.
3. The tenancy was for the period 12 August 2016 to 13 February 2017 and unless terminated would continue thereafter on a month to month basis.
4. A Notice to Quit dated 9 April 2020 was served on the Respondent on 23 April 2020 stating that the tenancy would terminate on 13 November 2020.
5. A Notice in terms of Section 33 of the 1988 Act dated 9 April 2020 was served on the Respondent on 23 April 2020 stating that possession of the property was required on 13 November 2020.
6. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 14 December 2020.
7. Notice of the date of the hearing had been given to the Respondent on 11 January 2021.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act. The Tribunal noted that the tenancy had been properly created as a short assured tenancy. The Tribunal noted that a Section 33 Notice had been served on the Respondent giving more than six months' notice that the Applicant required possession of the Property. The Tribunal noted that there was rent outstanding at the date of service of the Notice to Quit and the Section 33 Notice and at the date of the Hearing. In the absence of any submission by the Respondent that it would not be reasonable to grant an order for eviction, and in light of the submission made by the Applicant, the Tribunal determined that it was reasonable to issue an eviction order.


Decision

The Tribunal grants an Order for possession of the Property.

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.

Joan Devine



Legal Member

9 February 2021

Date