



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/21/1458

Re: Property at 35 Firrhill Crescent, Edinburgh, EH13 9EW (“the Property”)

Parties:

Mr Gregor Brown, Mrs Diane Brown, 16 East Camus Place, Edinburgh, EH10 6QZ (“the applicant”)

Ms Annette Townsley, 35 Firrhill Crescent, Edinburgh, EH13 9EW (“the respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it would make an order in favour of the applicant against the respondent for recovery of possession of the property.

Background

1. An application was received under Rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for eviction.
2. The application contained:-
 - a. a copy of the tenancy agreement
 - b. section 33 notice
 - c. notice to quit
 - d. certificate of service

- e. section 11 notice and evidence of service
- f. a copy of the respondent's rent statement

3. The applicant's representative, Ms Donnelly from Messrs T C Young appeared on behalf of the applicant. Mr Gordon from Shelter appeared on behalf of the respondent.
4. A case management discussion took place on 12 August 2021. Reference is made to the terms of the case management discussion note. At the case management discussion, the applicant's agent advised that the respondent had been in contact with the City of Edinburgh Council, and they were assisting her in finding alternative accommodation and also, in relation to her rent arrears. The applicant's agent sought an order for eviction but advised that the applicant was agreeable to an order not being enforced for a period of two months after the end of the appeal period to give the respondent time to find other accommodation.
5. The respondent's agent had sought a continuation of the case management discussion, the reasons being that:- (1) the City of Edinburgh Council Private Rented Sector Team and the Financial Inclusion Team were trying to assist the respondent in terms of her rent arrears and finding alternative accommodation. The council had agreed to make a payment to the rent arrears of £2,650.00. (2) the respondent was applying for a tenant hardship loan for the other rent arrears. (3) The Private Renter Sector Team were looking for other accommodation for the respondent. (4) Investigations were needed to be carried out in terms of the respondent's benefits.
6. He advised that the respondent had been in the tenancy for 13 years. It had previously been let to her through the council's arrangements for private leasing and later the applicant had granted a tenancy direct to the respondent. The tribunal required to be satisfied that it would be reasonable to grant an order. He confirmed that the respondent was not disputing the rent arrears.
7. The applicant's agent advised that (1) the property had been leased to the respondent for a number of years. It had originally been leased to her and her family. It was now only the respondent in the property, and it was a three bedroom property. (2) While the arrears were only listed from September 2020, there had been earlier arrears. (3) The applicant had written off some arrears and reduced rent to support the respondent. (4) There was a shortfall in terms of the rent due and her benefits did not cover the rent due. The respondent requires to pay additional bedroom tax. (5) The applicant

has a landscaping business. The rental property was to be his pension. The applicant could not afford to receive rental income for the subjects. (6) The respondent has been unresponsive to contact about the arrears. (7) The situation must be stressful for the respondent. It would be in her interests that an order be granted so that she could obtain more suitable alternative accommodation which she could afford.

8. The tribunal decided that the case should proceed to a hearing.
9. The tribunal issued a direction. The respondent subsequently submitted written answers. Both parties submitted productions and authorities.

Hearing

10. The applicant's agent confirmed that she was instructed to seek an order for eviction. She confirmed that the current level of arrears had now reduced to £2,825.73. That the Scottish Government tenant hardship loan had not been received or paid to the applicant. Neither party could say when or if it would be paid, and also how much would be paid. Notwithstanding that the arrears had reduced, and they may yet be cleared the applicant's agent advised that they were seeking an order for eviction; and an order for payment.
11. The respondent advised that the council had paid £2650 towards the arrears, and he agreed that the reduced figure was now as advised by the applicant's agent. The intention was that the remaining arrears would be paid by the tenant hardship loan. The tenant hardship loan will then be repaid by the respondent. The respondent advised that there was also a further universal credit payment due to be paid in October and this would reduce the rent arrears to £1905.73. The respondent advised that she did not oppose the payment order. She did oppose the eviction application. She did not consider it was competent and further, that it would not be reasonable to grant an order for eviction.
12. The applicant, Mr Brown gave evidence. He advised that the respondent had been in the tenancy for 14 years. He referred to the tenancy agreement. Clause 4 set out that the rent was £850 per month. He advised that the property was a 3 bedroom property with upstairs and downstairs, kitchen and dining room. Clause 11.5 : obligation regarding alterations to the property. Clause 11.10 : not to bring dangerous

substances on the property. Clause 14.1 to allow landlord entry to do routine maintenance.

13. He referred to the rent statement and he confirmed that the arrears were £2825.73. He advised that there had been varying payments received September and October 2020. That the tenant paid nothing at all in November and December 2020. He advised that he had called the DWP to enquire about rental payments in around January 2021. He was advised that the DWP had paid housing benefit direct to the tenant in November and December 2020, and so it appeared that she had just kept the money and not paid her rent. He advised that the respondent had also not been making any contribution to the balance of the rent due, the benefits themselves did not meet the full rent due. The last contribution received from the respondent was in October 2020. The respondent had only recently started making a contribution to her rent. He agreed that the council had paid £2650, and this had reduced the rent arrears.
14. We spoke to the tenant in January, and she advised us that she had kept the rent, she advised that she had other bills to pay and food. This had been around Christmas time.
15. In terms of the tenant hardship loan, he was not clear when that would be paid, he had not heard anything about it, he was not aware of when it would be paid. He believed that there was no guarantee that the tenant hardship loan would be paid.
16. He referred to a rent statement lodged (2nd inventory No 9). He advised that it showed rent due, and payments made over the last 2/3 years. He advised that he had frequently given support to the respondent when she had not paid her rent. He had agreed to a rent reduction for the respondent. He had frequently let the respondent of with rental for a number of years. He and his wife had made allowances for the respondent however they did not know what rent they would get paid. He said that the respondent's circumstances changed. The respondent's benefits changed and more so if she was receiving universal credit, which could be reduced and the respondent would have to make up the difference, but she did not do so.
17. He advised that the respondent could not afford the property. They discussed this with her, she had previously managed a bit better when she had her children were all living there. He thought that the benefits for the children supplemented her income. When the kids left, she acknowledged it was too big for her and she would look for something

smaller. The parties had discussed matters in around January 2020, and it was agreed it was too big for the respondent, and she was not able to meet the cost of the rent. He advised that he had agreed to a rent reduction for 6 months to £700 in January 2020. This was to allow the respondent time to find other accommodation.

18. The applicant thought that the respondent also wanted to look for something else as she has arthritis and struggles with the stairs and wanted something smaller.
19. He did not consider that the respondent prioritised her rent obligations. He advised that he had tried to contact the respondent in August 2021 about the arrears however she had gone away on two weeks holiday.
20. He advised that he was a landscape gardener. He relies on the rental payments to supplement his income. He advised that they have a mortgage over their own home and the property. He advised that his work is seasonal and with the covid pandemic it had been a difficult year. He considered that his earnings were subsidising the running costs of the rental property and he was in effect working for nothing. The legal costs of this action were also expensive. He expressed anxiety about his financial situation.
21. He referred to Production 10 which were a selection of WhatsApp messages. He referred to one of 15 April 2020 when the tenant had asked for a 3 month rent holiday as she was on furlough. He had advised her that she would still get paid. Another on 21 April 2020 she said that she could not meet full rent only £700. He advised that the applicant had been affected by covid. It had not been possible to get materials for his work and his business had had to stop for a time as people did not want him at their homes.
22. On 1 July 2020 he advised that this had concerned an installation of a hut at the property. He had agreed to a new hut being erected. The tenant offered to arrange for it to be erected. He had paid her £700 to do so. The one erected was not constructed properly. The respondent then asked for more money to finish it. It had still not been properly constructed.
23. On 1 July 2020 the respondent advised him that she had paid a deposit of £500 for a new kitchen. He was concerned as she had not erected the hut properly; she was not paying her rent yet had paid a deposit on a kitchen; and she had not asked permission

to install the kitchen. It was during the 6 month rent reduction period that she paid the deposit on the kitchen.

24. After the 6 months' rent reduction in January 2020, she paid £850 in July 2020 from benefits, the next month he received £480 only, as she said she could not afford to pay the rent; and the next month £500 again as she could not afford the rent. The respondent then suggested that she could rent out a room to assist her in paying the rent. The applicant advised her that she could not do this.
25. The applicant advised that they decided that we would sell the property, as they were not coping with the cost of it due to the continual issues with the reduced rental payments they received. However, they then decided that we should not be pushed into having sell the house just because the respondent was not paying the rent.
26. He advised that she would often ignore his contact with her if it was about something she was not interested in. In May 2021 he had been trying to get access to the property to get an energy performance certificate, the respondent had ignored his texts for two weeks. She said she was too busy. He received a text from her which he understood that was her allowing him entry to the property. He visited on 27 May and entered the property. When in the house, no one answered when he shouted. He went up the stairs and her boyfriend came out of the bedroom and told us to *fuck off*. There was a similar situation in terms of trying to get access to get the gas safety check completed. She again ignored texts and emails sent trying to organise a visit to do this check. If, however, there was a problem with the property which affected her she, he advised that she was quick in getting in touch to get that resolved.
27. He advised that they also wrote to the respondent (productions 12) about the arrears and giving her advice about what she could do about the rent arrears. They received no response to any of their letters to her. They also emailed her about the rent arrears.
28. The respondent had told the applicant that she was now unable to work due to her health, however recently they had been online and found that she was advertising her services as a cleaner, he referred to screenshot that they had lodged. He advised that he was concerned to find out that she says she cannot work and is relying on benefits, but that she may in fact be working. In addition, he was also concerned as he did not know who is living in the property, he didn't know if her boyfriend or members of her family were living with her. He was concerned about what would happen to her

benefits and rent payment if others lived there. If the benefits changed she would have to make up the shortfall, and he was worried that she would not do so. He thought that her son and boyfriend might be living there.

29. In terms of rent shortfall, he advised that the respondent would often say that she would make it up, but she does not do so. He said that he and his wife feel cheated by the respondent.
30. He was also concerned about other use of the property, in terms of the alterations and that she had a 5 foot gas canister in the garden which was dangerous.
31. He advised that the non-payment of rent has caused him and his wife financial stress. He submitted that he thought about it first thing in the morning and last thing at night. All year he had worked for nothing due to the rent that had not been paid. These rental failures had been ongoing over the 6/7 years. It had had a financial impact on him and his wife and caused anxiety. It had been time consuming in pursuing the matter. He and his wife just could not take anymore.
32. He suggested that his wish for the respondent to leave the property was due to more than just the rent arrears. He considered that they had been flexible landlords for years and there had been ongoing problems.
33. He confirmed that he had said that he would accept payment of the tenant hardship loan, but it had not been received. He was asked under cross examination if he had contacted the tenant hardship loan administrators to find out about when he would be paid. He advised that he had emailed them, and it appeared that the tenant hardship loan had not been processed yet. He was unsure what the administrative process was to finalise it.
34. It was put to him that the universal credit benefit would pay £825 towards the rent and the respondent would be able to make up the shortfall. He advised that he did not agree. He advised that there had been many changes to the benefits, and he was not reassured that the benefits would not change again. He said that respondent appeared to be seeking work. It also appeared that there were others living in the house. He thought it was a fluid situation.

35. He did not accept that the “reasonableness” ground in the law would be removed at some point in the future, he advised that he had read that the government were looking at keeping this requirement.
36. He advised that even if all the arrears were repaid and rent paid, he was still not sure that all rent would be paid in the future. He advised that he wanted to terminate the tenancy due to all the issues that they had had with the respondent not just the finances. He advised that they had been trying to end the tenancy since 2019.
37. Mrs Brown, the joint applicant then gave evidence. She advised that she dealt with the administration of the tenancy. She advised that the production 11 were messages from her to the respondent.
38. She referred to the respondent dated 28 September the tenant accepted that she could not afford the tenancy and needed something smaller and could not manage the stairs. She said this had been discussed and they had offered the 6 month rent reduction. They had tried to be fair to her in terms of reducing the rent and giving her time to pay a deposit and find somewhere else.
39. She referred to the tenant keeping the benefits and not paying rent, and she said it was a kick in the teeth. They had absorbed a lot of unpaid rent over the years, and they had been fair to her.
40. On 4 April 2021 she had asked if her partner could become a joint tenant.
41. In February 2021 the respondent had offered to pay more than the rent. She said that they just wanted the respondent to pay the rent, that would have been enough. She advised that the respondent had taken the rent reduction money but had no intention of moving. She considered that the respondent would just say anything, and she had no confidence in her paying the rent.
42. The history of the tenancy showed that the respondent would not adhere to any rent arrangements entered into. She would pay one month and then break the agreement the next month.
43. On 29 and 30 April 2021 she had received a long text from the respondent, she felt it was emotional blackmail. She felt that they had been sympathetic to the respondent

for a long period, had given lots of different assistance and had bent over backwards for her.

44. She spoke about the financial implications of the tenant remaining in the property. She said that the stress was unbearable. There was mounting lawyers' fees. She advised that after they told the respondent that they wanted her to leave, the respondent stopped speaking to them. She advised that there was a mortgage over the property, and they also had their own mortgage to meet, it was a strain on their marriage. She said they had had to absorb the rent arrears. She said she had from suffered stress and had had more frequent migraines and breathing problems, she believed that these increased due to not knowing rent would be paid. She advised that she would like to sell the property, as she considers that there is ongoing stress in keeping it.
45. She was asked why they had left the private letting scheme. She advised that the scheme no longer wanted three bedroom homes.
46. She accepted that the respondent was not in rent arrears in January 2020, although it had been the respondent's daughter who had paid the rent arrears off.
47. She was not reassured that the universal credit benefit would remain at the same level. She advised that they had not increased the rent. It may need to be increased and it may then be unaffordable. She advised it was not just rent that caused concern, it was the whole situation since 2019. She said that the rent covered the mortgage but not repairs to the property. She said that the mortgage had at least 15 years to run, and it was an interest only mortgage
48. Mrs Townsley, the respondent, gave evidence she advised that she was unemployed due to ill-health. She accepted that the rent arrears were due, she was not opposing the payment order.
49. In relation to the eviction, she explained that she got into financial difficulties in about 2019. She had started having problems with arthritis. In 2019 her children were older and had started moving out. She was then struggling to pay the rent.
50. Then in around October/November 2020 she had problems with covid and her ill-health. She saw a number of health professionals in relation to her health, including a mental health nurse. Arthritis then took hold. She had worked as a cleaner since she

was 15. She now accepted she could not continue to work due to the condition of her hips and hands. Her doctor had wanted to sign her off. She had refused to give up work for some time. When the kids started moving out, she took a second job to make up the rent. She did not know much about the universal credit benefits. She spoke to the landlord about making up the rent. She thought at that time it was time to get something smaller. She advised that her son had helped her pay of the rent arrears in in January 2020. She advised that didn't pay the rent in November/December 2020 as she had too many other bills. When she received the notice to quit she appreciated that the landlord was entitled to send it.

51. She said it was only about 3 months ago that she had found out about her benefit entitlement to universal credit. She advised that she is signed off permanently from work. The doctor's letter lodged was accurate. She has depression. She is on painkillers.

52. She had been told by the applicants that they wanted her out due to rent arrears only. She had applied for a tenant hardship loan, although she had not had any update on the tenant hardship loan. Her benefits were now universal credit, and they covered all her rent except for £25. Her rent was now paid direct to her landlords. She advised because she is now signed off completely her benefits will not change. She advised that she would be able to manage her financial position if she were to remain in the house.

53. She said that she had been in the property for 14 years. She had contacted the council to seek alternative accommodation. She advised that she had sought advice on finding alternative accommodation however the council had only showed her a few houses and they were not suitable. One was in a rough area, and another had 30 stairs to get to it. She had been trying herself, but they go very fast and she had had no success.

54. She advised that she had not made any alterations to the house. She had looked into her sons installing a new kitchen as they are joiners. She had paid a deposit. She spoke to the landlord and when he said no, she stopped. She advised that she saw this house as her family home and thought she could replace the kitchen, but she would not do it without permission. The gas cylinder in the garden had been there to secure the felt on the hut roof. It has been removed.

55. She said that there was confusion over the EPC certificate. She said that she had good contact with the gas company for the gas inspections. The day of the EPC she had not been well and was asleep in her bedroom, her daughter and partner were not aware that any one was coming to see the property and had got a shock. The landlord and other person just walked in. She advised that she never refused the landlord entry. She said that the gas safety certificate was never an issue. There had only been a problem last year but that was only due to covid restrictions; and this year she had been expecting someone to come out, but no one had arrived.
56. She thought that she had a great relationship with the landlords. She advised that she had originally been allocated the property as homeless accommodation. She had later agreed to take a private lease, when the applicant left the scheme. She thought they left it as it was costing them too much money. She lost her housing priority at that point. She thought that the parties relationship had broken down due to rent arrears, she had been struggling financially and didn't know anything about benefits. She had been struggling with her physical health, and it all "kicked off" at covid time.
57. She advised that the screenshot of her working as a cleaner was historic and she was not available for work, and she had been unable to get this advert of the internet. She said she is not seeking work.
58. She said that she would like to stay in this house forever. She had brought up her family in the house. She didn't want to move. She had not found any other properties. She has been unable to concentrate due to the threat of eviction. She accepted that she had been in and out of arrears for at least a year, but she denied that it was longer. She accepted that the landlord was frustrated with her. She accepted that she had received letters from the landlords about her arrears. That it had told her to apply for discretionary payments. She accepted it was her responsibility to pay rent. She accepted that the landlords had been contacting her asking her to pay the rent. She said that she had paid her rent consistently for 12 years.
59. She accepted that she had failed to pay rent in November and December 2020 she had prioritised other debts, she thought that the landlords understood. She said that she did not know that the landlords had their own financial situation to worry about.
60. She advised that she had taken a holiday however it had been paid for by her partner. She went on holiday as part of her recuperation. She advised that she had not told her

partner about the arrears, it was not his business. She had always been self-sufficient. She had never asked anyone for anything. She said that she was not aware that she could seek any other help. She said that she was not in the right frame of mind to think of it, and she was very proud. She said that she was now on anti-depressants, her universal credit was all sorted out and her kids were now helping her. She said that although she had suggested her partner becoming a joint tenant, she had in fact not spoken to her partner about it.

61. In relation to the tenant hardship loan, she said that she had thought that the tenant hardship loan was similar to the other payment that had been made. It was not until she heard about what exactly the tenant hardship loan was at this hearing that she realised it was not the same thing. It was only at the hearing that she realised that she should check what was happening with the tenant hardship loan.
62. She advised that she was not available for work, the screenshot was not correct, her doctor would not allow her to work. She said she was not looking for work. She said that she had failed to engage in the pain clinic due to the fact that it did not help, as they cannot do anything to relieve the pain. On a bad day she is unable to get out and walk about. She said her doctor supported her remaining in the property. She has support from her neighbours, and they can come in and make her a cup of tea.
63. She advised that she had agreed to look for something smaller, but then changed her mind. She advised that her daughter may move back into the house to assist her due to her physical and mental health. Her other family come round 1 or 2 times a week. She said that there was nobody residing with her at the moment, although her partner stays a couple of nights and her daughter couple of times a week. Her daughter may move back but she was waiting to see what would happen with the eviction action. She said that her granddaughter also stays with her sometimes to help her.
64. She said that she had texted the housing officer about finding suitable properties for her. She had contacted the housing manager as the housing officer had done very little for her. She had also contacted her local MP. She had had problems getting in touch with the council.
65. She said that she could manage the house even though there were stairs as there was only a few stairs. She said that she didn't want to leave this house as she loved it, she had been here for 14 years. She relies on people around her to look after her. Moving

might be detrimental for her. The only problem she said she had was the rent, but this had now been sorted out. She advised that the rent problems had only been for the last year.

66. The applicant's agent submitted that the applicants were entitled to an eviction order under section 33 of the 1988 Act. She submitted that there was no dispute over the service of the notice to quit, section 33 notice and section 11 notice. The contractual tenancy had terminated. Tacit relocation was not ongoing. The applicants can rely on section 33 to recover the property. It is competent to seek an order for eviction under section 33.
67. She did not consider that the amendments to the Housing (Scotland) Act 1988 by the Coronavirus (Scotland) Act 2020 prohibited the applicants from relying on section 33 as a way of evicting a person, even if grounds existed under section 18. She submitted that in the application paper apart it was averred that it would be reasonable to grant the order.
68. An AT6 is not needed. There is no obligation to use this section. The notice period is 6 months. The respondent has not been prejudiced by an application being made under section 33. The applicant should not be bound to use a specific ground under section 18. The applicants have to show that they have complied with the terms of section 33 including that it is reasonable to grant an order.
69. She submitted that the applicants had in fact also complied with the pre-action requirements in relation to the rent arrears. She did not consider that they had to do so, but they had in any event taken these additional steps to advise the respondent about the rent arrears. The letter had confirmed the debt, what may happen to the property and ways in which the respondent could seek support.
70. Adrian Stalker's *Evictions in Scotland* (2nd Edn.) merely observes the changes to section 33. It was still competent to rely on section 33. The technical requirements have been met.
71. She submitted that it was also reasonable to grant the order. She invited the tribunal to find the applicants reliable and credible. The witnesses had spoken to the rent arrears; shortfalls in rent; the reduction in rent to support the respondent in giving her time to find something else when she could not afford the rent, once her children left home. The concerns that the respondent prioritised her money on issues other than

her rent, for example the deposit on the kitchen. That if the order was not granted there would be an ongoing financial burden on the applicants. Mr Brown's employment was seasonal and he could not afford to subsidise the respondent staying in the property. The property was supposed to be a source of income for the applicants. The situation places financial hardship on the applicants.

72. The respondent only communicated with the applicants when it suits her, i.e., when she wants something done in her interests; but she is unhelpful otherwise for example when gas safety checks need done. Detailed communication evidence had been produced showing what had been discussed between the parties. The respondent has failed to seek alternative accommodation. The applicants had thought of selling the property due to the problems renting the property to the respondent.

73. She questioned whether the benefits that the respondent was now receiving would stay the same. There was no guarantee that they would not fluctuate in the future. The respondent appeared to be looking for work. She had failed to ensure that shortfalls in rent had been paid. She did not prioritise her rent payments. It was not clear who lived with her. She did not consider that the respondent was a credible witness.

74. She questioned the accuracy of the letter from the doctor and asked the tribunal not to place weight on it. The respondent had accepted that she had not engaged in the pain clinic. Having regard to all the factors before the tribunal it would be fair and reasonable to grant the order.

75. Mr Gordon for the respondents submitted that prior to covid section 33 was a mandatory *no fault* ground. The Coronavirus (Scotland) Act 2020 does violence to section 33. He referred to page 537 of *Eviction in Scotland*. He submitted that the landlord could use section 33 but only where the issue was not covered by any of the section 18 grounds. He thought that Parliament could not have intended that an applicant could seek an order for eviction under section 33 where a fault ground existed under section 18, but there was nothing in the application to give notice of the fault.

76. If the tribunal was not with him on the competency argument, then he submitted that it was not reasonable to grant the order. He referred to *Cumming v Danson [1942] 2 All ER 653*. The tribunal had to come to its decisions at the date of the hearing.

77. He submitted that one of the problems with today's hearing was that the applicant had not narrated what the issues in relation to reasonableness were. It difficult to extract

those issues from the productions lodged. It was not clear what the applicant's position was. The respondent had lodged detailed answers. The respondent had not had fair notice of the issues of reasonableness.

78. It was not reasonable to evict the respondent. He submitted that the amendments to section 33 were temporary and would become mandatory again, this was likely to happen in March 2022.
79. The respondent had sorted out her benefit issues. The remaining rent arrears were due to be repaid by the tenant hardship loan. She was now on universal credit, and this was evidenced by the production lodged. There had been significant payments to the rent arrears, for example the £2650 payment. The tenant hardship loan had been applied for and accepted by the applicant. There was not much more that the respondent could do. He submitted that the applicant had not made any efforts to find out about payment of the tenant hardship loan. The arrears would be paid in early course. The respondent could now afford the tenancy.
80. Also relevant were the respondent's physical and mental health issues. It would not be helpful for her to be evicted. Residing in the property provided her with stability. She did not contest the payment order. He submitted that the main issue was the rent arrears and not the EPC and gas certificate. Less weight should be placed on them. The applicants had been too soft and flexible with the respondent; the parties had too close a relationship, and it was a shock to the respondent that there was now such ill-feeling being expressed. Ill-feeling was not however a reason in law to evict the respondent. He therefore invited the tribunal to refuse the order.

Findings in Fact

81. The tribunal found the following facts established:-
- a. A tenancy agreement was entered into between the applicant and the respondent for the property. It commenced on 11 March 2015.
 - b. The AT5 Form was in the prescribed format and there was evidence that it had been given to the respondent prior to the creation of the tenancy agreement.
 - c. A valid notice to quit notice had been served on the respondent.
 - d. A valid section 33 notice had been served on the respondent.
 - e. A valid section 11 notice had been served on the local authority.

- f. The tenancy agreement provided that monthly rent was £850 and was payable on the same date each month.
- g. That the City of Edinburgh Council had paid £2650 towards rent arrears in around 12 August 2020.
- h. Rent arrears as at 5 October 2021 totalled £2,825.73.
- i. That the respondent had applied for a tenant hardship loan.
- j. That as of 5 October 2020 the tenant hardship loan had not been paid to the applicant; and there had been no confirmation that it would be paid and how much would be paid.
- k. That there had been a history of rent arrears since at least October 2019
- l. That that the property was a three bedroom property.
- m. That the respondent had been a tenant at the property for at least 14 years.
- n. That the respondent suffers from anxiety and depression. That she has chronic pain and has been diagnosed with mild osteoarthritis.
- o. That in around January 2020 the respondent had discussed with the applicant looking for a smaller property, and the applicant had agreed to reduce rent for 6 months to provide the respondent with an opportunity to find other accommodation and save for a deposit during that period.
- p. That the respondent had sought assistance from the City of Edinburgh Council housing department to find alternative accommodation.
- q. That the applicant had been worried and anxious about the non-payment of rent. That they were worried that the respondent would default in rent payments in the future.

Reasons for Decision

82. Section 33 of the 1988 Act (as amended by the Coronavirus (Scotland) Act 2020) provides that the tribunal may grant an order for possession under a short assured tenancy, where the tenancy has reached its end; tacit relocation is not operating; the landlord has given notice to the tenant that they require possession of the house; and that it is reasonable to do so.

83. The tribunal was satisfied that a short-assured tenancy had been created. We were satisfied with the terms of the section 33 notice and the notice to quit; and that these notices had been served on the respondent. That tacit relocation was not operating.

84. First, considering the question of the competency of this application. The tribunal were asked to find that it was no longer competent to grant an order for eviction under section 33 where a fault ground existed under section 18. It was put to us that in such circumstances a section 18 application should be made. That Parliament would not have intended to allow a section 33 application to be progressed where a fault ground existed. The tribunal does not agree with this proposition. We do not consider that it is not for the tribunal to presume what Parliament may or may not have intended in enacting legislation amending section 33. The starting point for the tribunal is to give an Act of Parliament its ordinary meaning. In the opinion of the tribunal the ordinary meaning of the amended section 33 is that the statutory provisions of serving valid notices requires to be complied with; and if the tribunal considers that valid notices have been served terminating the contractual tenancy, then it may then go on to consider the reasonableness of granting any order. We consider that proceedings under section 18 are different, the purpose of serving an AT6 may be to give notice to the tenant of the alleged breach in order that they can consider addressing it. An application under section 18 requires that the fault ground be established first and then the court may progress to consider reasonableness. Section 33 is different; no fault ground needs to be proved. We note that issues of reasonableness may overlap with what would be a fault ground, but that does not preclude section 33 being used to secure an order for eviction. It maybe that the value of using section 33 to obtain an order for eviction has now diminished given the requirement to now have to prove reasonableness but that it is not the same thing as establishing fault. We find that the application was competently made.

85. Has fair notice been given to the respondent as to why the applicant considers it would be reasonable to grant an eviction order? It is fair to say that the application contains only a brief line saying that it would be reasonable to grant the order. If that was all that the respondent had before her when coming to a hearing, then there may have been merit in the proposition that she had not had fair notice of the case against her. However, we do not consider that this was all the notice the respondent had. Reference is made to the terms of the case management discussion note which sets out issues of reasonableness as advised by the applicant's agent.

86. In the tribunal's opinion's the issues that the applicant considered relevant in assessing reasonableness related to rent arrears; that the property was an important income stream for the applicants, given that it supplemented their income from the landscaping business; that they had previously supported the respondent with rent issues and the

support had not been successful in addressing ongoing problems with payment; and the property was now too large for the respondent to afford. Accordingly, the tribunal were satisfied that the respondent had had fair notice of the issues which would be relevant in considering reasonableness.

87. Would it be reasonable to grant that the order? The tribunal would confirm that we found the applicants to be credible and reliable. In the main we also found the respondent to be credible. We believed that she wished to stay in the property and was settled in the neighbourhood. That she had worked as a cleaner for a number of years and she had suffered from some ill-health. In matters of dispute however we preferred the evidence of the applicants. We paid particular regard and were impressed with the evidence of Mr Brown who was measured and considered in his evidence. We found him to be genuinely anxious about what would happen if the order was not granted. We believed his concern that the situation with the respondent renting the property was causing real financial worry and detriment to himself and his family.

88. Having regard to the issue of whether it was reasonable to make an order for possession, it was not disputed by the respondent that she owed rent arrears. It was submitted that she had now sorted out her benefits and rent would now be paid. Having regard to the evidence about the history of rent arrears, we were not however satisfied that there was any certainty that there would not be problems with rental payments in the future. There was uncertainty as to who resided in the property with the respondent, and we considered that the respondent's own evidence on this point was not clear. If other people were to reside with her then that may alter her benefits.

89. We were asked to consider the issues of reasonableness as at the date of the hearing. We agree and find as at the date of the hearing that there are still outstanding arrears. That although there has been a tenant hardship loan applied for, it had not been paid and there was no evidence before us to show that it would be paid and how much would be paid. We were also unclear how much would have to be repaid, what the tenant hardship loan payments would be and how the respondent would afford them. We note that the respondent indicated in evidence that she only realised the day of the hearing that it was a loan, and it was only that day that she contacted the agency dealing with her application to find out what was happening with it. The respondent implied that this was the obligation of the applicant to find out about payment. We disagree we considered that the respondent's failure to ensure that there had been progress with securing and paying the tenant hardship loan was indicative of her

general attitude to rent payment for the property. We did not consider that even at this late stage that she had prioritised her housing situation.

90. We consider that there had been ongoing issues with rent over a number of years, we thought it more likely than not that the applicants had been reasonable in letting the respondent off with rental shortfalls over the years. We considered that the applicants had now lost patience and faith with the respondent. The applicant no longer believed that that the respondent would ensure her rent payments were made and we consider that they had good reason to come to this conclusion.
91. The parties had discussed the respondent looking for other accommodation and they had agreed to reduce the rent for the property for 6 months to allow her to do so. It appeared that the respondent made no effort however to look for other accommodation over this period but had continued to accept the rent reduction.
92. We note that the applicants had tried to engage with the respondent about paying her rent and arrears and this has been unsuccessful. There was evidence of correspondence sent from the applicants by way of WhatsApp's, emails and letters raising concerns about the payment of rent, and the letters setting out advice about what she should do in relation to her rent arrears.
93. We heard evidence from the applicant that this property was his pension, and it appeared that it had also been supplementing his income during covid. We accepted his evidence when he said that it was costing him money to allow the respondent to rent the property and he had been working for nothing. We considered that it must have caused both him and his wife considerable stress during 2020 when their finances were being stretched. We considered that this must have had a detrimental impact on the applicants.
94. We do note that the respondent has resided in the property for a number of years and is settled in the house and within the community. We also note that she suffers from some physical and mental ill-health, however we were not clear about the extent of the impact that this would have on her day to day life. If indeed she has trouble with stairs then we consider that moving to more suitable ne level accommodation may be of benefit to the respondent. We note that she has a supportive family who have already paid off some of her earlier arrears and support her in her day to day living giving her stated physical vulnerabilities. We consider that they will be able to continue to support her in finding and moving to other accommodation. She is also known to the

local authority, and they have been assisting her in looking for alternative accommodation, this support will undoubtedly continue if an order for eviction were to be granted.

95. We consider that if we do not grant the order, there is a likelihood that the current rent arrears will remain outstanding, and the respondent may not pay her rent in the future: especially if she experienced any benefit changes; if she was repaying any hardship loan obtained; or if other priorities arose which she considered to be more pressing than her rent. We consider that it would not be reasonable for the applicants to have to live with this risk and ongoing worry. We consider that the financial impact caused by the respondent's failure to pay rent was relevant in coming to this decision. We considered that as the applicant relies on the rental income it would be unreasonable for them to have ongoing uncertainty about future rent payments being made by the respondent. We accept the applicant's position that the respondent has failed to engage with them over matters that she did not consider important, and this included payment of her rent and arrears, and we are not convinced that this would not continue in the future.

96. In all the circumstances we were satisfied that the requirements of section 33 had been met and weighing up all matters we consider that it would be reasonable to grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.

Decision

97. We grant an order in favour of the applicant against the respondent for recovery of 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.

Melanie Barbour