



**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/22/0268**

**Re: Property at 43 Moray Avenue, Dunbar, EH42 1QG (“the Property”)**

**Parties:**

**Mr Stephan Hughson, Rose Anne Hughson, 64b Uxbridge Road, Mellons Bay, Auckland, 2014, New Zealand (“the Applicant”)**

**Mr Craig Clark, 43 Moray Avenue, Dunbar, EH42 1QG (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction should be granted.**

**Background**

On 31st January 2022 the Applicants lodged an application with the Tribunal in terms of Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking an order for eviction of the Respondent in terms of section 18 of the Housing (Scotland) Act 1988.

Lodged with the Application were:

1. Copy Tenancy Agreement dated 1<sup>st</sup> February 2017 with a date of entry of 31<sup>st</sup> January 2017
2. AT5 signed by the Respondent on 1<sup>st</sup> February 2017
3. Notice to Quit dated 1<sup>st</sup> July 2021 with leave date of 30<sup>th</sup> January 2022
4. Section 33 Notice dated 1<sup>st</sup> July 2021 with leave date of 30<sup>th</sup> January 2022

On 17<sup>th</sup> February 2022 the Tribunal wrote to the Applicant's agent asking for proof of service of the notices, a section 11 notice and comments on the validity of the AT5 given that it was signed after the date of entry on the lease.

The Applicant's agent replied by email on 18<sup>th</sup> February 2022 attaching recorded delivery proof of service of the notices, a section 11 notice and an explanation that that Respondent could not come in to sign his lease until 1<sup>st</sup> February 2017 but was aware that it had started the day before.

On 7<sup>th</sup> March 2022 the Tribunal wrote again to the Applicant's agent pointing out that s32(2)(b) of the Housing (Scotland) Act 1988 stated that the AT5 had to be served before the creation of the tenancy, and asking for confirmation of how the AT5 was served.

On 9<sup>th</sup> March 2022 the Applicant's agent sent an email to the Tribunal attaching a letter signed by the Respondent confirming that the Applicant's agent had served him with the AT5 before the start date of the tenancy by posting it through the letterbox of the property he was living in at the time. They also lodged a handwritten note by Chloe Hanratty-Fairbairn confirming that the Respondent had handed the letter in to her office on 9<sup>th</sup> March 2022.

The papers were served on the Respondents by Sheriff Officer on 22<sup>nd</sup> April 2022.

## **Case Management Discussion**

A Case Management Discussion ("CMD") took place by teleconference on 6<sup>th</sup> June 2022.

The Applicant was represented by Mrs Margaret Thom of Cruz Property Management Ltd.. The Respondent did not appear and was not represented.

Mrs Thom confirmed that she was seeking an order for eviction in terms of the application. The Notices had been served correctly and the tenancy had been brought to an end.

In relation to reasonableness Mrs Thom said that the Applicant wished to sell the property due to his own financial circumstances. He had delayed serving notices due to the start of the pandemic, but as the pandemic progressed he could not put off moving forward. The Respondent had occupied the property with his wife and children, but they had recently separated. They had been rehoused but the Respondent was now occupying a four bedroom property which was too big and too expensive for him. The local authority would not look at re-housing him until he was served with an eviction order.

## Findings In Fact

1. The parties entered in to a Short Assured Tenancy Agreement, with an AT5 having been served prior to the commencement;
2. Notice to Quit and section 33 Notice were served on the Respondents correctly and timeously;
3. The Applicant wished to sell the property due to his financial circumstances;
4. The Respondent lived alone in the property, which has 4 bedrooms;
5. The local authority will not rehouse the Respondent unless he has an eviction order.

## Reasons For Decision

The Tribunal were satisfied from the information put forward that the ground of eviction had been established.

Granting an application for eviction based on section 33 of the Housing (Scotland) Act 1988 provided that the notices are correct and have been served correctly, is normally mandatory. However, in terms of Section 2 and Schedule 1, Paragraph 3 of the Coronavirus (Scotland) Act 2020 makes the ground discretionary and the Tribunal has to consider reasonableness. The section is as follows:

*3(1)The Housing (Scotland) Act 1988 applies, in relation to a notice served on a tenant under section 19 or 33(1)(d) of that Act while this paragraph is in force, in accordance with the modifications in this paragraph.*

*(2)Section 18 (orders for possession) has effect as if—*

*(a)subsections (3) and (3A) were repealed,*

*(b)in subsection (4), for “Part II” there were substituted “Part I or Part II”,*

*(c)in subsection (4A), after the word “possession” there were inserted “on Ground 8 in Part I of Schedule 5 to this Act or”.*

*(3)Section 20 has effect as if subsection (6) (no discretion where landlord entitled to possession) were repealed.*

*(4)Section 33 (recovery of possession on termination of a short assured tenancy) has effect as if in subsection (1)—*

*(a)in the opening words, for the word “shall” there were substituted “may”,*

*(b)after paragraph (b), the word “and” were repealed,*

*(c)after paragraph (d) there were inserted “, and*

*(e)that it is reasonable to make an order for possession.”.*

*(5) Schedule 5 (grounds for possession of houses let on assured tenancies) has effect as if for the heading of Part I there were substituted "Certain grounds on which First-tier Tribunal may order possession in relation to the period of the Coronavirus (Scotland) Act 2020".*

The Tribunal has to consider all the circumstances relevant when deciding on reasonableness. In this case given that the Applicant wished to sell the property due to his financial circumstances, the Respondent had not opposed the action and the Respondent's circumstances had changed to the extent that he was now living alone in a four bedroom house, the Tribunal considered it reasonable to grant the eviction.

### **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.**

# Alison Kelly

6<sup>th</sup> June 2022

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Legal Member/Chair

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Date