



**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/22/0564

Property: 18 Five Roads, Kilwinning KA13 7JX ("Property")

Parties:

**Edward Leslie Ainsworth, 20 Leam Road, Leamington Spa CV33 9TE
("Applicant")**

**Clarity Simplicity Ltd, 34 Woodlands Road, Glasgow G3 6UR ("Applicant's
Representative")**

**Alan Calderwood and Lorna Calderwood, 18 Five Roads, Kilwinning KA13 7JX
("Respondent")**

Tribunal Members:

Joan Devine (Legal Member)

Leslie Forrest (Ordinary Member)

Decision

**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 dated 17 and 29 October 2014; AT5 addressed to each of the Respondent; Notice to Quit dated 28 July 2021 addressed to the Respondent; and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("1988 Act") dated 26 July 2021 addressed to the Respondent; Sheriff Officer's certificate of service evidencing service of the Notice to Quit and section 33 notice on each of the Respondents on 28 July 2021; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 dated 24 February 2022 with covering email dated 25 February 2022; mandate from Margaret Ainsworth dated 21 February 2021 and certificate of service by Sheriff Officer evidencing service of the Application on the Respondents on 1 April 2022.

Case Management Discussion (“CMD”)

A CMD took place on 19 May 2022 at 10am by conference call. In attendance for the Applicant was Kirsten Bruce of the Applicant’s Representative. There was no appearance by the Respondent.

The Tribunal noted that an AT5 was produced but was not signed. Ms Bruce said that it formed part of the tenancy agreement document. The Tribunal noted that a notice to quit and a document stated to be an AT6 and also a notice under section 33 of the Housing (Scotland) Act 1988 had been served on the Respondent. The Tribunal noted that there was no prescribed form of notice under section 33 of the 1988 Act the only requirement being that the landlord had given to the tenant notice stating that they required possession of the house. The Tribunal noted that this notice was provided in the notice to quit and the notice which appeared to be a combination of an AT6 and a section 33 notice.

Ms Bruce addressed the question of reasonableness. She said that the rent was in arrears of approximately £3000. She said that no benefits were being paid towards the arrears. She said that both the Respondent were in employment. As far as she was aware they lived in the Property alone without any children. She said that the Applicant had tried to maintain communications with the Respondent but that had recently broken down and he had been unable to contact the Respondent. Ms Bruce said that the Applicant wished to have access to the Property but had been unable to arrange that. She said that the Applicant was finding letting the Property stressful and, if an order for possession was obtained, he may sell the Property.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement dated 17 and 29 October 2014.
2. The AT5 was part of the tenancy agreement.
3. The tenancy was for a period of six months from 29 October 2014 and unless terminated would continue thereafter on a month to month basis.
4. A Notice to Quit dated 28 July 2021 was served on the Respondent on 28 July 2021 stating that the tenancy would terminate on 29 January 2022.
5. A Notice in terms of Section 33 of the 1988 Act dated 28 July 2021 was served on the Respondents on 28 July 2021 stating that possession of the property was required on 29 January 2022.

6. The tenancy had reached its end, tacit relocation was not operating, no further contractual tenancy was in existence.
7. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.

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 and Notice to Quit had been served on the Respondent giving more than six months' notice that the Applicant required possession of the Property. Having considered all of the circumstances, the Tribunal determined that it was reasonable to issue an order for possession of the Property.

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.

J Devine

Legal Member

Date : 19 May 2022