

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 33 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/22/0620

Re: Property at 6 Playfair Terrace, Dundee, DD3 8PE (“the Property”)

Parties:

Lee Brown, Janette Brown, 309 Strathmartine Road, Dundee (“the Applicant”)

Ms Ashley Boyd, 6 Playfair Terrace, Dundee, DD3 8PE (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Frances Wood (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 be granted

- **Background**

1. This was a case management discussion to consider the application made by the Applicants dated 1st March 2022 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules. The CMD took place by teleconference.
2. The Applicants are the Landlords in a Short Assured Tenancy with the Respondent who is the tenant. The Applicants have title and interest by virtue of owning the property.
3. The Applicants were not personally present on the teleconference but were represented by their solicitor Mr Iain MacRae. The Respondent did not attend on the call and was not represented. She has made no written representations but was served a copy of the application and the accompanying papers by sheriff officer on 11th April 2022 and so the Tribunal

was satisfied the Respondent had due intimation of the CMD and that it would be appropriate to proceed in her absence.

4. The Applicant had lodged and the Tribunal had sight and considered the following documents:-
 - a. Application for repossession dated 1st March 2022
 - b. Copy Tenancy Agreement for the Property
 - c. Copy AT5 Notice
 - d. Notice to Quit dated 29th June 2020 giving notice to leave by 18th September 2020
 - e. S33 Notice dated 29th June 2020 giving notice to remove by 30th December 2020
 - f. Confirmation of service of notice to quit and s33 notice by Mr Iain McRae dated 1st March 2022 with copy track and trace receipt dated 30th June 2020
 - g. S11 notice to Dundee City Council sent by e-mail on 1st March 2022
 - h. Written representations from the Applicants confirming why it would be reasonable for the order to be granted.

The Discussion

5. The Legal Member explained the purpose and order of the proceedings today and invited the Applicants to explain what they were seeking and why. The Tribunal waited approximately until 14.10 to see if the Respondent wished to join the call but she did not join and has not lodged any written representations.
6. The Applicant's solicitor Mr MacRae confirmed that his clients the landlords and applicants were seeking an order for possession today. He advised that the appropriate notices were served on the Respondent in June 2020, terminating the contractual tenancy which he advised had been entered into for a year and ended on 18th September 2015 initially. He confirmed the Notice to Quit ended the tenancy on 18th September 2020 and the s33 notice had given 6 months as then required. He advised that the Respondent had initially contacted Dundee Law Centre around August 2020 as he had been contacted by them and asked for a copy of the lease and AT5 which he had supplied. Mr MacRae advised that the Law Centre had confirmed the Respondent was looking to be rehoused by the Council and they needed the paperwork to advise her. He confirmed he has not heard anything from them since but remembered that the tenant had phoned recently asking for a copy of the lease.
7. With regard to the question of reasonableness Mr McRae referred to his written submissions and confirmed that the Respondent has 4 children living along with her in the Property, that it is overcrowded and she wishes to be rehoused by the Council but won't be until she receives an order of eviction. He advised this is what the Applicants have told him although they have not spoken to the Respondent recently.
8. He confirmed the rent is currently being paid in full from the housing element of Universal Credit which now meets the monthly rent but that previous arrears of £1,739.56 had accrued and no payment has been, nor is likely to be, made towards them. In his written submissions Mr MacRae also confirms the Applicants wish to refurbish the house when they manage to get

possession and arrange for their daughter to move into it for starting University in September 2022.

Findings in Fact

9. The Applicant and Respondent entered into a short assured tenancy of the Property for a period of one year ending on 18th September 2015.
10. The Applicants are the Landlords and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
11. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
12. The Applicant has served a Notice to quit terminating the contractual tenancy on 18th September 2020
13. A S33 notice was served on the Respondent giving 6 months' notice that they required possession of the Property by 30th December 2020.
14. The Respondent who is the tenant has not vacated the property.
15. A s11 notice in terms of the Homelessness etc. (Scotland) Act 2003 was served on the Local Authority on 1st March 2022
16. The Tribunal finds it reasonable that an order for eviction be granted.

Reasons for Decision

17. The Applicants entered into a Short Assured Tenancy with the Respondent in September 2014 and the original term of the tenancy was one year and an AT5 form was served prior to that date. The Tribunal accepts the submissions of Mr MacRae that the ish date in this lease was 18th September and the Applicants have served a notice to quit terminating the tenancy on the termination date. They have also given notice of their intention to require possession in terms of S33 of the Act.
18. S33 of the Act says "Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act the First Tier Tribunal for Scotland may make an order for possession of the house if it is satisfied-
 - a) That the short assured tenancy has reached its ish
 - b) That tacit relocation is not operating
 - c) That no further contractual tenancy is for the time being in existence and
 - d) That the landlord (or where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house and
 - e) That it is reasonable to make an order for possession.

The period of notice required to be given under S33 (1) (d) above is six months, in accordance with the legislation as amended. 6 months' notice has been given.

19. The Short Assured tenancy has reached its ish, tacit relocation is not operating and there is no further contractual tenancy in existence, so the Applicant having given adequate notice in terms of S33 above, can and has applied to repossess the Property. However since April 2020 and Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020, there has been a

change to the law on repossessions and before an order for possession is granted the Tribunal has to be satisfied that it is reasonable to grant the order.

20. The Tribunal is able to make any order at a case management discussion as it can after a Hearing. The Tribunal considered carefully the submissions from the Applicants and the written evidence it had before it. The Applicants have served the relevant notices over a year ago and the Applicants believe that the Respondent has contacted the council about rehousing but the Council will not assist until she has an order for eviction. The Applicants wish to regain possession of the Property so that their daughter can move in when she starts University. Given it has now been over a year since the S33 notice was served, given the Landlords wish to allow their daughter the right to stay in the Property, that there are rent arrears that are unlikely to be repaid and given the council does have a duty to rehouse or give advice on this to the Respondent then the Tribunal balancing the interests of both parties, finds it is reasonable to grant an order for repossession at this CMD and that a hearing is not required.

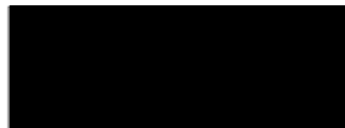
- **Decision**

An order for repossession was granted.

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.

Legal Member:



Date: 25/05/2022