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/22/0701

Re: Property at 21C Harvard Court Perth Airport, Scone, Perth, PH2 6PL ("the Property")

Parties:

MORRIS YOUNG LESLIE, CALEDONIAN HOUSE, WALNUT GROVE, WEST KINFAUNS, PH2 7XS ("the Applicant")

Mr Steven Young, 21C Harvard Court Perth Airport, Scone, Perth, PH2 6PL ("the Respondent")

Tribunal Members:

Rory Cowan (Legal Member) and Ahsan Khan (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 possession should be granted.

- Background

By application dated 7 March 2022, the Applicant sought a Possession Order for the Property in terms of section 33 of the Housing (Scotland) Act 1988 (the Application). Following acceptance of the Application, a Case Management Discussion (CMD) was initially fixed to be held by way of conference call on 6 September 2022.

With the Application, the Applicant, through his representatives, lodged various documents including the following:

- Copy Lease and Form AT5 both dated 29 June 2017; and
- Copy Notice to Quit (NTQ) and Section 33 notice dated 12 July 2021 with corresponding receipt for recorded delivery service dated 21 July 2021 along with proof of delivery.

Prior to the CMD, and in response to a request by Tribunal Administration, the Applicant's representatives lodged written submissions and authorities aimed at addressing an issue raised relative to their use of a combined or "hybrid" notice rather than a separate NTQ and section 33 notice. These submissions were lodged on 18 August 2022 and copied to the Respondent.

The CMD called by way of conference call on 6 September 2022. The Applicant was represented by Miss Nicola Brown solicitor. The Respondent failed to attend or be represented. Notwithstanding, the Tribunal was satisfied that he was aware of the Application and his requirement to attend or be represented at the initial CMD and that, in the circumstances they could proceed in his absence. The CMD was continued to allow the Applicant's representative to consider a potential issue identified by the Tribunal and a fresh CMD was fixed for 20 October 2022. This further CMD was again to be heard by way of conference call. Prior to the CMD on 20 October 2022, on behalf of the Applicant, further written submissions were lodged by email dated 18 October 2022. At the CMD on 20 October 2022, the Applicant was again represented by Miss Brown. A Mr McKillop attendED also to observe the CMD. Despite intimation of the continued CMD date, the Respondent again failed to attend. Notwithstanding, the Tribunal again decided to continue in his absence.

- The Case Management Discussion

At the CMD on 20 October 2022, the Tribunal dealt initially with the issue identified at the previous CMD and sought the Applicant's position in relation to same. In short, the Applicant's position was that there was no need to recalculate each ish date after the initial ish on 29 December 2017 as the ish date would remain the same (ie 29th of each month) except in February, where it would be the 28th of that month (excluding leap years). Miss Brown referred to her submissions and the case of Dobbs v Walker [1981] 1WLR 1027 (the Dobbs case). She also referred to the Interpretation Act 1978 and the meaning of "month". The position being that, in the context of the underlying lease, the expression "month" meant a calendar month, something that did not appear to be in any dispute as noted in the Note issued by the Tribunal following the last CMD. It should be noted that the Tribunal found neither the Dobbs case, nor the 1978 Act of particular assistance. The Dobbs case was decided under English law and dealt with the calculation of the amount of notice to be given in terms of the provisions of the Landlord and Tenant Act 1954 and did not seem to assist in relation to the calculation of duration of a lease term under Scots Law. The 1978 Act related to the meaning of expressions given in legislation rather than in a contract, such as a lease, as the Tribunal was dealing with in the Application.

The "fallback" position adopted by Miss Brown was that the underlying lease should be given its "natural ordinary meaning" and any words should be given their "ordinary common-sense meaning" so that anyone receiving the notice would understand the position. She stated that there was no need to look at or calculate the various ish dates leading up to the one chosen and identified in the Notice to Quit. If that is done, her submission was that the 29 January 2022 was an ish date and the requirements of section 33 of the Housing (Scotland) Act 1988 had therefore been met.

At this stage and before any decision was made on the issue of the notice to quit, Miss Brown was then asked to address the Tribunal in relation to reasonableness and the reason why a Possession Order was sought. She explained that primary reason was the Respondent's substantial rent arrears. A rent schedule had been lodged with the Application, which showed that the Respondent was in arrears as of January 2022 in the sum of £14,173. Rent was £500 per calendar month and that, since that rent schedule, no rent had been paid by the Respondent meaning a further £4,000 rent arrears had accrued. That these arrears had persisted for "years" and that, despite various attempts to engage with the Respondent, he had failed to engage or make any efforts to address the arrears. The Tribunal asked why, if rent arrears was the reason possession was sought, the Applicant had not sought to rely upon one of the rent arrears grounds in Schedule 5 to the 1988 Act? Miss Brown indicated that her firm had not served the notices, but she understood that the Applicant had felt this was the more straightforward route and the Respondent's failure to engage would have meant that issuing any Pre-action Requirement letters (as would have been required if ground 8 of schedule 5 were to be relied upon) would have "not achieved anything". She did stress that, notwithstanding this decision, regular attempts had been made to engage with the Respondent and that every month rent statements would be sent to the Respondent to advise of the increasing arrears. Further, Miss Brown indicated that her firm had issued a letter on 8 April 2021 seeking payment of the arrears too. This had been met with no response. Miss Brown then indicated that the Respondent lived at the Property alone and that he had no dependents. As far as they were aware he was not working, but they were not aware if he was in receipt of any benefits including any housing element. They were not aware of anything that would have meant that the arrears or any part of the arrears had accrued as a result of any problems with such benefits. If the Respondent was in receipt of any housing element to any benefits he may receive, these had not been paid to the Applicant. The position being that, despite various attempts to discuss the arrears with him, the Respondent had simply failed to engage with the Applicant. There was nothing in the Applicant's circumstances that Miss Brown wished to highlight in the context of reasonableness.

- Findings in Fact and Law

1) That the Respondent entered into a lease for the Property with the Applicant that commenced on 29 June 2017.
2) That the lease so entered into was a Short-assured Tenancy.
3) That on 21 July 2021 the Applicant sent a combined Notice to Quit and Section 33 Notice to the Respondent by recorded delivery seeking to terminate the contractual tenancy as at 29 January 2022.
4) That 29 January 2022 is an ish date.
5) That the contractual tenancy has been validly terminated as at 29 January 2022.
6) That the required notice in terms of s33(1)(d) has been given to the Respondent.
7) That the Applicant has therefore complied with the requirements of section 33 of the Housing (Scotland) Act 1988.
8) That the Respondent remains in the Property.

9) That, in all the circumstances, it is reasonable to grant an Order for Possession.
10) That the Applicant is therefore entitled to an Order for Possession relative to the Property.

- Reasons for Decision

The Application proceeds under Rule 66. The basis for the request for a Possession Order is therefore Section 33 of the Housing (Scotland) Act 1988.

In order to be able to grant such an Order for Possession, the Tribunal first needs to be satisfied that the Applicant has complied with the requirements of section 33 of the 1988 Act. These are:

1) The Short-assured tenancy has reached its ish;
2) That tacit relocation is not operating
3) There is no further contractual tenancy; and
4) The landlord has given the tenants notice that they require possession of the property concerned.

The required notice period applicable in relation to section 33, as at the date of these notices, has been given and the combined notice to quit and section 33 notice were set to expire on 29 January 2022, which the Tribunal determined was an ish or end date. From the documents lodged with the Application, it appeared that the underlying tenancy met the requirements of section 32 of the 1988 Act and was therefore a Short-assured Tenancy.

As such, the Tribunal was satisfied that the requirements of section 33 had been complied with.

The only issue remaining for the Tribunal was whether it was reasonable to grant an Order for Possession in the circumstances. Having heard the Applicant's solicitor and having considered the relevant circumstances detailed above, the Tribunal was satisfied that it was reasonable to grant an Order for Possession. The Respondent failed to appear and therefore failed to put any matters before the tribunal that could form the basis for any argument that it was not reasonable to grant such an order.

- Decision

The Tribunal therefore decided to grant an Order for Possession. The decision was unanimous.

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/Chair **Date** **20 October 2022**