



**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/22/0783**

**Re: Property at 265C High Street, Kirkcaldy, KY1 1JH (“the Property”)**

**Parties:**

**Mr Malcolm Howes, 20 Strathalmond Road, Edinburgh, EH4 8AF (“the Applicant”)**

**Ms Carol Dick, 265C High Street, Kirkcaldy, KY1 1JH (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Elizabeth Currie (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the possession of the property and the removal of the Respondent from the property.**

**Background**

1. By application dated 15 March 2022 the Applicant applied to the Tribunal for an order for possession of the property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant submitted a copy of Form AT5, the Tenancy Agreement, Section 33 Notice, Notice to Quit with proof of service and Section 11 Notice in support of the application.
2. By Notice of Acceptance dated 26 April 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 23 May 2022.

4. By email dated 4 July 2022 the Applicant submitted further written representations in support of the application.

### **The Case management Discussion**

5. A CMD was held by teleconference on 11 July 2022. The Applicant attended in person. The Respondent did not attend nor was she represented. The Tribunal being satisfied that proper intimation having been given to the Respondent determined to proceed in her absence.
6. The Tribunal noted from the Applicant that the parties had entered into a Short Assured Tenancy that had commenced on 8 July 2013 and endured initially for a period of six months and from month to month thereafter. The Tribunal further noted there was a typographical error in the agreement and that the end date ought to have been 8<sup>th</sup> January 2014 and not 8<sup>th</sup> January 2013 as stated on the agreement. The Tribunal also noted that the rent had initially been £350.00 per calendar month but had increased to £373.96 in December 2020.
7. The Applicant confirmed he had sent a Notice to Quit and Section 33 Notice to the Respondent by recorded delivery post on 19 August 2021 and the documents were delivered on 20 August 202 according to the Post Office Track and Trace confirmation submitted with the case papers. The Applicant also confirmed he had sent a Section 11 Notice to Fife Council on 10 March 2022.
8. The Applicant explained that he was seeking an order for possession due to the level of disrepair within the property caused by the Respondent and her lack of willingness to work with him in having the property returned to good order. He explained that following the Coronavirus pandemic there had been a rapid decline in the Respondent's willingness to co-operate. The Applicant spoke of evidence from neighbours that the Respondent had been subletting the property without permission and in breach of the tenancy agreement. He went on to say that the relationship with the Respondent had soured to such an extent that it was no longer possible for him or his contractors to gain access to the property to carry out any maintenance. He explained that the Respondent had not allowed access for a gas safety inspection nor to deal with "beeping" smoke alarms. The Applicant went on to say that there was evidence from neighbours that the Respondent was not using the property as her main residence and there were safety issues as one person who had been staying in the property had covered up the smoke detectors and had been having indoor barbecues.
9. The Applicant advised the Tribunal that the Respondent had accrued rent arrears and he had obtained an order for payment from the First-tier Tribunal. He went on to say that the Respondent had been granted time to pay but had then defaulted after the first payment and was now five instalments in arrears. The Applicant confirmed that the Rent was currently being paid through Housing Benefit.

10. The Applicant said that when he had last attended at the property in 2021 there were no wardrobes and no clothes being stored there. The Applicant explained that he had contacted the local authority to voice his concerns that the Respondent may not be living at the property but following an investigation it had been concluded she was staying at the property.
11. The Applicant went on to say that he wished the Tribunal to grant an order for possession as he did not think the Respondent was able to look after the property as could be seen from the evidence submitted with his written submissions. He referred the Tribunal to the issues around the poor decoration, the faulty plumbing that had resulted in numerous leaks and damage to the property. The Applicant said that he had tried to sit down with the Respondent to resolve the issues but that this had gone nowhere and that the Respondent no longer replied to communications. The Applicant said that there had been no communication with the Respondent since about August 2021.
12. The Applicant said he knew little about the Respondent's circumstances. He did not think she was working. She was in receipt of benefits. She had a daughter who was in her twenties.
13. The Applicant submitted it was reasonable to grant the order sought.

### **Findings in Fact**

14. The parties entered into a Short Assured Tenancy that commenced on 8 July 2013 and endured until 8 January 2014 and from month to month thereafter.
15. The initial rent was £350.00 per calendar month and increased to £373.96 in December 2020
16. The Applicant served a Section 33 notice and Notice to Quit on the Respondent by recorded delivery post on 19 August 2021.
17. The notices expired on 8 March 2022 but the Respondent remained in occupation of the property.
18. The Applicant intimated a Section 11 Notice to Fife Council on 10 March 2022.
19. The Applicant has been unable to gain access to the property in order that a gas engineer carry out a Gas Safety Inspection.
20. The Respondent has changed the lock on the door of the property.
21. The Respondent has failed to maintain the property to an acceptable standard.
22. The Respondent has caused damage to the property.

23. The Respondent has failed to respond to communications from the Applicant.
24. The Applicant has been unable to carry out maintenance at the property due to the Respondent's failure to facilitate access.
25. The Respondent has failed to maintain instalment payments under a Time to Pay order in respect of rent arrears.

### **Reasons for Decision**

26. The Tribunal was satisfied from the documents produced and the oral submissions from the Applicant that the parties entered into a Short Assured Tenancy that commenced on 8 July 2013 and endured until 8 January 2014 and continued thereafter from month to month. The Tribunal was also satisfied that the Respondent had been properly served with a Section 33 notice and Notice to Quit and that following the expiry of the notices had remained in occupation of the property. The Tribunal was also satisfied that the Applicant had properly given notice to Fife Council of these proceedings by way of a Section 11 notice. The Tribunal was therefore satisfied that the Applicant had met all the procedural requirements for the granting of an order under Section 33 of the 1988 Act.
27. Before granting such an order the Tribunal, by virtue of the terms of the Coronavirus (Scotland) Act 2020 had to consider whether in all the circumstances it would be reasonable to grant the order sought. The Tribunal took account of the very substantial documents submitted by the Applicant in his email of 4 July 2022 including the photographic evidence showing the condition of the property. The Tribunal was satisfied that the Respondent was not maintaining the property in an acceptable condition and was in breach of the tenancy agreement in this regard. The Tribunal also had concerns with regards to the Applicant being unable to meet his statutory obligations to carry out a gas safety inspection or to be able to gain access for routine maintenance.
28. The Tribunal took account of the fact that despite being given an opportunity to submit written representations and to attend the CMD in person the Respondent chose to do neither.
29. Taking everything into account and particularly the very detailed written representations submitted by the Applicant together with his oral submissions the Tribunal was satisfied that it had sufficient information before it to allow it to make a decision without the need for a hearing and determined that it was reasonable to grant an order for possession.

### **Decision**

30 The Tribunal having carefully considered the written and oral submissions finds the Applicant entitled to an order for possession of the property and the removal of the Respondent from 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.**

G. Harding

**Graham Harding  
Legal Member/Chair**

**11 July 2022  
Date**