



**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/22/0825

**Re: Property at 1 Parkgrove Crescent, Clermiston, Edinburgh, EH4 7RW (“the
Property”)**

Parties:

Mr Shazad Gul, 16 Maplewood Park, Livingston, EH54 8BB (“the Applicant”)

**Ms Louise Anderson, 1 Parkgrove Crescent, Clermiston, Edinburgh, EH4 7RW
 (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Mike Scott (Ordinary Member)

Background

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided the following documentation:-
 - (i) Short Assured Tenancy Agreement between the parties dated 13 April 2016 together with Form AT5;
 - (ii) Notice to Quit dated 14 September 2021 and Notice under section 33 of the Housing (Scotland) Act 1988 dated 14 September 2021 together with proof of service by Sheriff Officers; and
 - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Edinburgh City Council together with proof of service by email.
- 2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore

assigned for the 15 July 2022 to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers.

Case Management Discussions

- 3 The Case Management Discussion took place by teleconference on 15 July 2022. The Applicant was represented by Ms Jacqueline Ridley of Blacklocks Solicitors. The Respondent was not in attendance. The Tribunal noted that she had received service of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions for joining the case conference. The Tribunal was therefore satisfied that she had received proper notification and determined to proceed in her absence.
- 4 The Tribunal then proceeded to hear from Ms Ridley on behalf of the Applicant. Ms Ridley advised that the Applicant sought an eviction order under section 33 of the Housing (Scotland) Act 1988. She confirmed that the Applicant had been in touch with neighbouring properties and it appeared that the Respondent was still residing in the property. There had been no contact from the Respondent and it was noted she had not submitted written representations in response to the application. She had not paid rent for over two years and the arrears now stood at over £30,000. Ms Ridley believed that the Respondent was the sole tenant. The Respondent had been in receipt of housing benefit some years ago and the Applicant had contacted the local authority to seek direct payment to no avail.

Relevant Legislation

- 5 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

33 Recovery of possession on termination of a short assured tenancy.

(1) 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 may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its finish;

b) that tacit relocation is not operating; and

(c)

(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.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;

(ii) in any other case, six months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that time shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

Findings in Fact and Law

6 The Applicants entered into a Short Assured Tenancy Agreement with the Respondent dated 13 April 2016.

7 The tenancy between the parties was therefore a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.

8 On 15 September 2021 the Applicant delivered a Notice by Sheriff Officers under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 18 March 2022.

9 On 15 September 2021 the Applicant delivered a Notice to Quit to the Respondent by Sheriff Officers which sought to terminate the tenancy on 18 March 2022. The Notice to Quit was in the prescribed form. 18th March 2022 is a valid ish date.

- 10 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.
- 11 The Respondent has not paid rent in over two years.
- 12 The Respondent is not engaging with the Applicant.
- 13 It is reasonable to make the order sought by the Applicant.

Reasons for Decision

- 14 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Respondent had been given the opportunity to participate in the proceedings but had chosen not to do so. There was therefore no issues to be resolved that would require a hearing to be fixed.
- 15 The Tribunal was satisfied that the tenancy between the parties was a short assured tenancy, and that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988. The requirements of section 33 were therefore complied with. The issue for the Tribunal to determine thereafter was whether it was reasonable in all the circumstances to grant an eviction order.
- 16 The Tribunal had no reason to doubt the credibility of the evidence put forward by the Applicant and the Respondent had not put forward anything to contradict the Applicant's account of the circumstances surrounding the tenancy. The Tribunal was therefore satisfied, having regard to the background outlined by the Applicant, that there were substantial rent arrears and the Respondent was no longer engaging with the Applicant. The Respondent was also believed to be the sole tenant of the property. On that basis the Tribunal considered it would be reasonable to grant an eviction order having regard to the particular facts and circumstances of this case.
- 17 The decision of the Tribunal 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.

R O'Hare

15 July 2022

Legal Member/Chair

Date