

**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/22/1368**

**Re: Property at Flat 2 The Kennels, West Saltoun, East Lothian, EH34 5EJ (“the  
Property”)**

**Parties:**

**Saltoun Home Farm Partnership, Saltoun House, Pencaitland, East Lothian,  
EH34 5DS (“the Applicant”)**

**Mr Andrew Barnes, Flat 2 The Kennels, West Saltoun, East Lothian, EH34 5EJ  
 (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Elizabeth Currie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined to make an eviction order with extract suspended for a  
period of two months.**

**Background**

- 1 By application to the Tribunal dated 11 May 2022 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 15 March 2010 together with Form AT5 dated 11 March 2010;

- (ii) Notice to Quit, Form AT6 and Notice under section 33 of the Housing (Scotland) Act 1988 all dated 25<sup>th</sup> October 2021 together with certificate of service by Sheriff Officers dated 26<sup>th</sup> October 2021;
  - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to East Lothian Council with proof of service by email;
  - (iv) Rent Statement; and
  - (v) Copy correspondence from the Applicant's representative to the Respondent.
- 2 By Notice of Acceptance of Application dated 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 18 November 2022.
- 3 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**

### The First Case Management Discussion

- 4 The Case Management Discussion took place on 30 August 2022. The Applicant was represented by Mrs Alexandra Graham, Solicitor. The Respondent, Mr Andrew Barnes, was in attendance.
- 5 The Legal Member explained the purpose of the Case Management Discussion and ask parties to address the Tribunal on their respective positions.
- 6 Mrs Graham explained that the Applicant sought an order for possession under section 33 of the Housing (Scotland) Act 1988. The short assured tenancy had reached its ish as at 30 April 2022. A Notice to Quit, notice under section 33 of the Housing (Scotland) Act 1988 and a Form AT6 had been served on the Respondent on 26 October 2021. The Applicant ought to be able to exercise his contractual right to recover the property at the ish date, having entered into a short assured tenancy with the Respondent. Mrs Graham went on to explain that a notice under section 11 of the Homelessness etc (Scotland) Act 2003 had been served on the local authority.
- 7 Mrs Graham clarified that the Applicant did not seek to rely on the Form AT6, but was instead seeking to rely on the Notice to Quit and section 33 Notice. She explained that there were outstanding rent arrears and it was therefore reasonable for the order to be granted. The Respondent had been given ten months notice of the Applicant's intention to recover the property. There had

been ample opportunity for the Respondent to seek alternative accommodation. As at May 2022, rent arrears of £4425 were outstanding. The situation had reached the point where matters required to be resolved by the granting of an order to recover the property.

- 8 In response to questions from the Tribunal, Mrs Graham confirmed that the amount of rent arrears was £4425. Rent had been paid for the last three months, but the arrears had not reduced. In terms of why the landlord was seeking recovery of the property, Mrs Graham advised that she did not think it was primarily on the basis of rent arrears, they were one problem. Payments had been sporadic for a while. Between May 2020 and October 2020 no rent had been paid. Mrs Graham advised that she believed the Applicant to have a number of properties but could not give a specific figure. Mrs Graham further advised she was not clear on the Applicant's intentions, in the event that the order was granted, as she had not requested this information from him.
- 9 Mr Barnes proceeded to address the Tribunal. He was not disputing the arrears had accrued back in 2020. He had been caught by the coronavirus lockdown and lost track of his finances. He was on universal credit, struggling to pay bills. He had contacted East Lothian Council at the time looking for advice and assistance. The Council had offered to pay back some of the amount outstanding which the Applicant had declined. Mr Barnes explained that he had since been sequestered, therefore the arrears as at the date of sequestration would be dealt with under his estate, which was being managed by Wylie Bissett. Mr Barnes confirmed that he had now regained employment and was in a position to make payment of rent moving forward. With the exception of December 2021, he had paid rent consistently and intended to do so in future. He confirmed that he resided with another person in the property, with no dependents. He had been looking at other properties, as he understood it wasn't an ideal situation and he didn't want to be somewhere that he was not wanted. Until he found employment it had been difficult to source other accommodation but he had every intention of moving in the near future. He understood that the council would assist him with a deposit for a new private tenancy, but he was not high on the local authority list. An application had been made but his chances of receiving an offer were not good.
- 10 In response to questions from the Tribunal, Mr Barnes explained that he had spoken with the Applicant's representative, Mr Fletcher, when the arrears accrued to explain his predicament and he understood Mr Fletcher to be reasonably happy at the time. Mr Barnes had believed his rent was £545 per month, having received notification from the Applicant to this effect approximately eight years ago, however Mr Fletcher had told the Council it was £525, therefore Mr Barnes had reduced his payments to reflect that. Mr Barnes wasn't sure whether he wanted to dispute the order or not. He would be looking for additional time to vacate the property and find other accommodation.
- 11 The Tribunal adjourned to consider further procedure. Having considered the application paperwork and the submissions from the parties the Tribunal concluded that it was not satisfied based on the information before it that it would be reasonable to grant the order. Mrs Graham had offered to seek further information from the Applicant in order to address issues highlighted by

the Tribunal, including the Applicant's intentions regarding the property. The Tribunal therefore considered it would be appropriate to adjourn the Case Management Discussion to a further date and seek further information from the parties to allow a determination of the application. A Direction was issued under separate cover confirming the information sought by the Tribunal.

- 12 By email dated 15 September 2022 the Applicant's representative provided a response to the Direction. In summary, the Applicant's representative advised that he wished to carry out refurbishment works to the property that would be invasive and would require vacant possession of the property. In particular the Applicant sought to replace the fireplace with a wood burning stove and replace flooring, as well as carrying out redecoration. The Applicant then intended on reletting the property. The Applicant's representative further advised that in respect of the grant funding offered by the Council this had been refused on the basis that the Council had advised the Applicant that he would be unable to pursue recovery of the property if he accepted the grant. Furthermore he had little confidence in the Respondent's ability to maintain payments to the rent account.

#### The second Case Management Discussion

- 13 The second Case Management Discussion took place on 18 November 2022. Mr Ruari Peoples from Turcan Connell Solicitors appeared on behalf of the Applicant. The Respondent, Mr Barnes, was also in attendance.
- 14 Mr Peoples noted that Mrs Graham had outlined the procedural aspects of the section 33 process at the previous Case Management Discussion and proceeded to address the Tribunal on the reasonableness of granting the order. He explained that the Respondent had been given more than a years notice of the Applicant's intention to recover possession of the property. He had therefore had ample opportunity to make alternative arrangements. Mr Peoples noted that the Respondent was now in employment which should assist him in finding alternative accommodation and the Respondent had stated that he was looking for other properties. Mr Peoples went on to point out the terms of the tenancy agreement which stated that either party could terminate the tenancy on giving two months notice. The Applicant and Respondent were both aware of this. The Respondent had however had more than 12 months notice by this point. Mr Peoples submitted it would therefore be reasonable for the Tribunal to grant an eviction order.
- 15 Mr Peoples explained that of relevance was the fact that the Respondent still had substantial rent arrears. The Respondent had been sequestered on 5<sup>th</sup> May 2022 with large debts and no assets. There was therefore no realistic

aspect of the Applicant recovering the arrears. The loss impacted on the Applicant's ability to invest in the future of his farm. Mr Peoples referred to the Applicant's response to the Direction. The Applicant intended on carrying out extensive works to the property including the removal of the fireplace and installation of a wood burning stove. A full redecoration of the property was also planned including the installation of new flooring. The Applicant expected this would take a minimum of eight weeks. The Applicant intended on letting out the property once the refurbishment was complete. Mr Peoples also addressed the issue of the local authority grant. The Applicant had been told during the pandemic that the grant was available for arrears that had accrued during that time. However the Council had said that if the grant was accepted the Applicant would not be able to recover the property and no further grants would be provided if further arrears accrued. In view of the history of the tenancy the Applicant was apprehensive about arrears accruing in future. It was a catch 22. The Applicant therefore decided to terminate the tenancy under the lease and applicable legislation.

- 16 In response to questions from the Tribunal Mr Peoples advised that he did not have a note of the exact level of the grant offered to the Applicant. He confirmed that the arrears stood at £4385, having reduced by £40 since the last Case Management Discussion. Mr Peoples advised that the removal of the fireplace was a significant job, it was fairly large. The Applicant intended to provide a more energy efficient wood burning stove.
- 17 The Tribunal then heard from Mr Barnes. He confirmed that he had been looking for another property but it had been tricky, with properties going off market quickly. However he had now sourced a new property, had provided references and had paid the deposit. He was just waiting for the final tenancy documentation, at which point he would be able to vacate the property. Mr Barnes confirmed that he was now in permanent employment and had been paying the rent. He thought the reduction in arrears of £40 was an accounting error and may be connected to the confusion over whether the rent was £525 or £545. In response to questions from the Tribunal Mr Barnes advised that there was nothing really that he would disagree with or dispute in terms of the position the Applicant had put forward. He accepted that the arrears had accrued during the pandemic when his business had gone bust.

### **Relevant Legislation**

- 18 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 finish 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**

19 The Applicant entered into a Short Assured Tenancy Agreement with the Respondents which commenced on 15 March 2010.

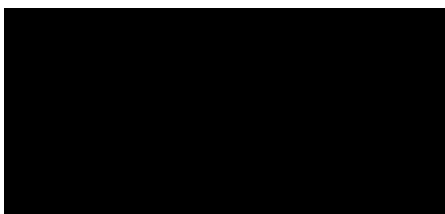
- 20 The term of the tenancy was from 15 March 2010 to 30 September 2010 and monthly thereafter.
- 21 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 22 On 26<sup>th</sup> October 2021 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 30<sup>th</sup> April 2022 and a Notice to Quit to the Respondent which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form.
- 23 The 30<sup>th</sup> April 2022 is a valid ish date under the terms of the tenancy between the parties.
- 24 Under Clause 2 of the said tenancy agreement the Respondent undertook to pay rent at the rate of £525 per month. The rent was subsequently increased to £545 per month.
- 25 The Respondent has accrued rent arrears in the sum of £4385 as at 18 November 2022.
- 26 The Respondent was sequestrated in 5<sup>th</sup> May 2022.
- 27 The Respondent lost employment during the coronavirus pandemic. The Respondent has since resumed permanent employment.
- 28 The Applicant wishes to refurbish the property by removing the existing fireplace, installing a wood burning stove, replacing the flooring and redecorating.
- 29 The Respondent does not reside with any dependents in the property.
- 30 The Respondent wishes to remove from the property. The Respondent has sourced alternative accommodation.
- 31 It is reasonable to make the order sought by the Applicant.
- 32 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

## **Reasons for Decision**

- 33 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 Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved.
- 34 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 35 The Tribunal noted the arrears that had accrued and the subsequent impact on the Applicant in terms of the loss of income. Whilst the rent was now being met there remained a significant balance outstanding which the Applicant was now unable to recover following the Respondent's sequestration. The Tribunal also took into account the Applicant's intentions regarding the property, namely that he wished to refurbish it in order to relet which he was entitled to do. It was clear that the Respondent was intent on removing from the property, and would soon be in a position to do so provided everything was in order with his new tenancy. There would therefore appear to be little prejudice to him in the event of an eviction order being granted. Accordingly the Tribunal ultimately concluded, against the background outlined by the parties, that it would be reasonable to grant an eviction order. The Tribunal did however consider it appropriate, given the upcoming festive season, to suspend extract of the order by a period of two months.
- 36 The Tribunal therefore determined to make an eviction order in this case. 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.**



\_\_\_\_\_  
**Legal Member/Chair**

**18<sup>th</sup> November 2022**

\_\_\_\_\_  
**Date**



