



**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 (“the Act”)**

**Chamber Ref: FTS/HPC/EV/22/1371**

**Re: Property at 9 Dunure Place, Kilmarnock, KA3 6FN (“the Property”)**

**Parties:**

**Mr Simon MacKay, C/O Ayr Estate and Letting Agents, 2 Parkhouse Street, Ayr, KA7 2HH (“the Applicant”)**

**Mr George Madden, 9 Dunure Place, Kilmarnock, KA3 6FN (“the Respondent”)**

**Tribunal Members:**

**Jim Bauld (Legal Member) and Eileen Shand (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted**

**Background**

1. By application dated 10 May 2022, the applicant sought an order under section 33 of the Housing (Scotland) Act 1988 (“the Act”) and in terms of rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. On 8 September 2022 the application was accepted by the tribunal and referred for determination by the tribunal.
2. A Case Management Discussion was set to take place on 18 November 2022 and appropriate intimation of that hearing was given to both the landlord and the tenant . This application was heard simultaneously with a separate application for a Payment order under case reference number FTS/HPC/CV/22/1372

## **The Case Management Discussion**

3. The Case Management Discussion (CMD) took place on 18 November 2022. The applicant was not personally present but was represented by his agent, Mr Alan Lavelle from Ayr Estate and Letting Agents, 2 Parkhouse Street, Ayr KA7 2HH. The Respondent did not attend.
4. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters
5. The tribunal asked various questions of the landlord's agent with regard to the application and the extent of the rent arrears owed by the tenant.
6. Mr Lavelle indicated that there have been no payments made since the application was lodged. He confirmed that he had recently met with the respondent when he was conducting a viewing of another property for a female applicant and Mr Madden was also present. Mr Lavelle indicated that Mr Madden said funds in relation to the arrears for this property were being held in a solicitor's account and would be released. Mr Lavelle has had no contact from any solicitor nor has any payment been made.
7. Mr Lavelle confirmed that there has been an issue with the heating system in the property and that he had obtained authority from the landlord to replace the boiler and that such works have been done. After the boiler have been replaced the tenant seemed to have an issue with it and wished to speak directly to the landlord. The landlord did not wish to speak directly to the tenant and indicated that all contact should be via their appointed agent
8. The tribunal then asked Mr Lavelle why it would be reasonable to grant the eviction order sought. He indicated that he had made numerous attempts to resolve the apparent issue which the tenant had but the tenant has not been willing to communicate with him in a proper manner. Mr Lavelle had lodged a number of emails with the application in which the tenant had responded to him in a deeply unpleasant manner. Rent has now been in arrears for almost a year and the total arrears were now a significant figure. He confirmed to the tribunal that to the best of his knowledge Mr Madden was still residing in the property and was living there alone.
9. The agent confirmed that he wished the eviction order sought to be granted

## **Findings in Fact**

10. The Applicant and the respondent as respectively the landlord and the tenant entered into a tenancy of the property by an agreement dated 4 and 8 June 2017.
11. The tenancy was initially a joint tenancy including Miss Lyndsey Higgins as a joint tenant. She removed from the property a number of years ago and the tenancy has continued with the respondent as sole tenant.
12. The tenancy was a short assured tenancy in terms of the Act
13. The tenant was initially obliged to pay rent of £700 per month. Payments of monthly rent were due on or before the 5th of each month. The rent was increased to £750 per month with effect from 8 October 2021
14. The tenant had accrued rent arrears at the date of the application of £4,650.
15. At the date of the CMD, arrears had increased to £9,900
16. On 26 October 2021 the applicant served upon the tenant a notice to quit and a notice in terms of section 33 (1) (d) of the Act. These notices were served on the respondent both personally and by recorded delivery post. Said notices became effective on 8 May 2022
17. The notices informed the tenant that the landlord wished to seek recovery of possession using the provisions of section 33 of the Act.
18. The notices were correctly drafted and gave appropriate periods of notice as required by law.
19. The basis for the order for possession was accordingly established

## **Discussion and Decision**

20. When the 1988 Act was originally passed, the eviction process under section 33 was mandatory. The tribunal was required by law to grant the eviction order if satisfied that the required notices in terms of that section had been served upon the tenant.
21. Since 7 April 2020, in terms of changes initially made by the Coronavirus (Scotland) Act 2020 and then by the Coronavirus (Recovery and Reform) (Scotland) Act 2022 an eviction order on this basis can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order

22. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties

23. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

*“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.*

24. In this case the tribunal finds that it is reasonable to grant the order.

25. The level of arrears is extremely high and it is unlikely that the arrears will ever be repaid. There is no suggestion that the tenant is making any attempt to meet them. The tenant has effectively ignored the issue of non-payment of arrears for a period of over a year. No proper explanation has been given to the applicant in respect of the non-payment.

26. In the case of *Grampian Housing Association Limited v. Carol Pyper* (2004 Hous. L.R. 22) where an order for eviction was sought on the basis of rent arrears, the Sheriff Principal indicated that in certain cases arrears would be at such a level that the court *“would be driven inexorably to the conclusion that it would be reasonable to grant an order for possession of the defender's house”*.

27. The balance of reasonableness in this case is heavily weighted towards the landlord in this application

28. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD

## **Decision**

The order for recovery of possession is 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.

# Jim Bauld

21/11/2022

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Legal Member/Chair

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Date