



**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/22/2934**

**Re: Property at Flat 3/R, 55 Dens Road, Dundee, DD3 7JB (“the Property”)**

**Parties:**

**Razina Atchia, Mr Nabiil Atchia, 45 Fechny Park, Perth, PH1 1PT (“the Applicants”)**

**Mr Adrian Waszkiewicz, Flat 3/R, 55 Dens Road, Dundee, DD3 7JB (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Angus Lamont (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for possession of the property and the removal of the Respondent from the property under Section 33 of the Housing (Scotland) Act 1988.**

**Background**

1. By application dated 16 August 2022 the Applicants’ representatives, Campbell Boath, Solicitors, Dundee, 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 Applicants’ representatives submitted copies of the Short Assured tenancy agreement, Form AT5, Notice to Quit, Section 33 Notice, proof of service, Section 11 Notice and proof of service in support of the application.
2. Following further correspondence with the Tribunal administration a legal member of the Tribunal with delegated powers by Notice of Acceptance dated 2 November 2022 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 30 November 2022.

### **The Case Management Discussion**

4. A CMD was held by teleconference on 1 February 2023. The Applicants did not attend but were represented by Mr Alec Campbell from the Applicants' representatives. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation of the CMD had been given to the Respondent determined to proceed in his absence.
5. Mr Campbell confirmed to the Tribunal that the Respondent had entered into a Short Assured tenancy of the property that had commenced on 15 March 2016 at a rent of £390.00 per calendar month. He also confirmed that the tenancy had endured until 15 March 2017 and then continued from month to month thereafter.
6. Mr Campbell went on to say that on the instructions of the Applicants' letting agents Messrs Karim, he had served a Notice to Quit and Section 33 Notice both by delivering personally to the Respondent on 10 June 2022 and by sending by recorded delivery post. He confirmed that the notices had been delivered by Royal Mail on 13 June 2022 and referred the Tribunal to the proof of delivery submitted with the application.
7. Mr Campbell also confirmed that a Section 11 Notice had been sent to Dundee City Council on 16 August 2022.
8. The Tribunal noted that the Applicants had provided the letting agents with written authority to act on their behalf in connection with all matters relating to the property.
9. When asked to provide information as to why it would be reasonable to grant the order sought Mr Campbell explained that there had been problems with the Respondent who had caused damage to the doors, walls and ceilings of the property. There had also been a gas leak at the property that had been reported by a neighbour and which had been discovered to have been caused by the Respondent tampering with a hose supplying the gas cooker. This had resulted in the gas supply being cut off. Mr Campbell also advised the Tribunal that following the notices being served the Respondent had stopped paying rent and arrears had risen from £1350.00 to now being in excess of £5000.00.
10. Mr Campbell said that it had also been thought that the Applicant may have abandoned the property as a neighbour had advised that the Respondent had been seen moving out his belongings. He said that following the raising of the proceedings the Respondent had contacted the Applicants' representatives and apologised for not paying the rent but there had been no further contact. Mr Campbell said that the Applicants had decided not to pursue the loss of rent but just wanted to recover possession of the property and carry out the repairs that were required. He said it was therefore reasonable to grant the order.

## **Findings in Fact**

11. The Respondent entered into a Short Assured tenancy of the property that commenced on 15 March 2016 at a rent of £390.00 per calendar month.
12. The Tenancy endured until 15 March 2017 and continued from month to month thereafter.
13. The Respondent was served with a valid Notice to Quit and Section 33 Notice both dated 10 June 2022 requiring him to vacate the property by 15 August 2022.
14. Intimation of these proceedings was given to Dundee City Council by way of a Section 11 Notice on 16 August 2022.
15. The Respondent has accrued rent arrears of around £5000.00.
16. The Respondent has caused damage to the property.

## **Reasons for Decision**

17. The Tribunal was satisfied from the written representations and the oral submissions that the Respondent entered into a Short Assured tenancy that commenced on 15 March 2016 at a rent of £390.00 per calendar month and endured until 15 March 2017 and then continued from month to month thereafter. The Tribunal was also satisfied that a valid Notice to Quit and Section 33 notice had been served on the Respondent by the Applicants' representatives both by personal service and by recorded delivery post. The Tribunal was also satisfied that a Section 11 Notice had been sent to Dundee City Council advising them of these proceedings.
18. Were it not for the provisions of the Coronavirus (Scotland) Act 2020 and the Coronavirus Recovery and Reform (Scotland) Act 2022 the Tribunal would have been obliged to grant the order sought without further enquiry. However, in terms of these Acts the Tribunal requires to be satisfied that it is reasonable in the circumstances to grant the order. In reaching its decision the Tribunal has taken account of the fact that despite being given an opportunity to submit written representations and to attend the CMD the Respondent has done neither. The Tribunal has also considered the submissions made on behalf of the Applicants and given that the Respondent has caused damage to the property and has not paid any rent for many months and there is some doubt as to whether he is continuing to live in the property, the Tribunal is satisfied that it is reasonable to grant the order sought.

## **Decision**

19. The Tribunal having carefully considered the written and oral submissions and being satisfied that it has sufficient information before it to allow it to make a decision without the need for a hearing finds the applicants 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.**

**Graham Harding  
Legal Member/Chair**

**1 February 2023  
Date**