

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under 33 of the Housing (Scotland) Act 1988.

Chamber Ref: FTS/HPC/EV/22/3815

Re: Property at 15 Caroline Street, Elgin, IV30 4DR (“the Property”)

Parties:

Mrs Caroline Hornby, Longhill, Dunbar Street, Lossiemouth, IV31 6RD (“the Applicant”)

Mr Lee Thomson, 15 Caroline Street, Elgin, IV30 4DR (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Melanie Booth (Ordinary Member)

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for Recovery of Possession on termination of a Short Assured Tenancy under Section 33 of the Housing (Scotland) Act 1988. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The Hearing took place by teleconference.

Attendance and Representation

Ian Maltman, solicitor, Allan Black & McCaskie Solicitors, 151 High Street, Elgin, IV30 4DR, attended to represent the Applicant, who was not present.

The Respondent was not present. He was served papers by Sheriff Officers on 20th January 2023.

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

Preliminary Matters

There were no preliminary matters raised other than contact with the Respondent. The Applicant's representative said there had been no recent contact with the Respondent, but he remained in the property.

Case Management Discussion

For the Applicant

The Applicant's representative submitted that he sought an Order for Repossession against the Respondent in terms of Section 33 of the Housing (Scotland) Act 1988. He submitted that the tenancy was a Short Assured Tenancy under Section 33 of the said Act. The tenancy was originally a joint tenancy but there was a separation in 2019 and although there was no written variation of the lease parties agreed same would continue with the Respondent only. The Applicant's representative said that this change in circumstances coincided with a downturn in the financial position of the Respondent, but he continues to work. For the first time the Respondent began missing rental payments. The Applicant's representative said that the Applicant sought to work with the Respondent but this was unsuccessful and she determined she would need to bring the tenancy to an end. There was an earlier application with a defective Notice to Quit. She now brings this application.

The Applicant's representative set out that that a valid Notice to Quit was issued on 23rd June 2022 in terms of section 33 and this brought the tenancy to an end. The Applicant's representative said that the Applicant sent same by recorded delivery and had lodged messages between parties regarding same. The Applicant had also produced evidence and photographs of the postal packet and postal information showing the Notice to Quit was sent. A copy of same is lodged.

. The Applicant's representative said there had been many months of arrears and they were at £8850 currently. The Applicant is a retired doctor and she has 5 properties in total to rent out, although one is let to a family member without income. There was a mortgage on this property and the Applicant has had to use other income to pay this.

The Applicant's representative said that the Respondent lives on his own and he has contact with 2 children. He has the possibility of alternative accommodation with the local authority and is currently working as a fabricator. The Applicant's representative sought an order for £7200 plus interest at 4% per annum from the decision.

Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondent had been served papers by Sheriff Officers on the 20th January 2023 and had not provided written representations.**

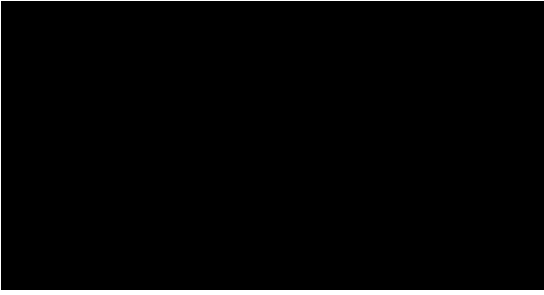
2. The Tribunal was satisfied that the tenancy was in terms of Section 32(1) of the 1988 Act, a Short Assured Tenancy for not less than 6 months and in relation to which a prescribed notice namely a valid AT5 had been served before creation of the short assured tenancy.
3. In terms of Section 33 of the 1988 Act the Tribunal considered that the Short Assured Tenancy had reached its end and the Notice to Quit contained the correct end date.
4. Further the Tribunal was satisfied that no tacit relocation was operating, no further contractual tenancy was in existence and a valid Notice to Quit had been served on the Respondent terminating the tenancy with the necessary notice given to the Respondent.
5. On balance from the various pieces of evidence lodged there was service of the Notice to Quit lodged, and the necessary Section 11 notice sent to the relevant local authority.
6. In balancing the circumstances of both parties, the Tribunal noted that the Respondent was in work and had had a period to resume his financial responsibilities after a separation. He resided alone. The Tribunal also noted that the Applicant has been responsible for the property and the maintenance of four others without income from this property. She is retired. The Tribunal found that it was reasonable to grant the Order sought.
7. Accordingly in terms of Section 33 of the 1988 Act the Tribunal granted an order against the Respondent for possession of the Property and superseded extract for 2 months.

Reasons for Decision

The Tribunal considered that the Applicant had complied with the relevant statutory provisions and the question for the Tribunal was whether the Order sought was reasonable. The Tribunal found in particular the evidence for both parties on their circumstances provided by the Applicant's representative to be credible and reliable. Accordingly in the circumstances the Tribunal considered it was reasonable to grant the Order.

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.



Karen Kirk
Legal Member/Chair

17 February 2023
Date