



**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/23/0073**

**Re: Property at 2 Torrance Avenue, East Kilbride, G75 0RN (“the Property”)**

**Parties:**

**Mr Jon Doubt, Miss Emma Banks, Villa 11/31, Street 18b, Alsafa 1, Dubai, United Arab Emirates (“the Applicant”)**

**Mr Mohammed Sylla, Miss Julie McFadden, 2 Torrance Avenue, East Kilbride, G75 0RN (“the Respondent”)**

**Tribunal Members:**

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

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order**

**Background**

- 1 By application to the Tribunal the Applicants sought an eviction order against the Respondents in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicants provided the following documentation:-
  - (i) Short Assured Tenancy Agreement between the parties dated 6<sup>th</sup> November 2013 together with Form AT5;
  - (ii) Notice to Quit dated 1<sup>st</sup> July 2022 together with proof of service by recorded delivery;
  - (iii) Notice under section 33 of the Housing (Scotland) Act 1988 dated 1<sup>st</sup> July 2022 together with proof of service by recorded delivery;

- (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003 to South Lanarkshire Council.
- 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 assigned for the 26<sup>th</sup> April 2023. 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 Respondents by Sheriff Officers.

### **Case Management Discussion**

- 3 The Case Management Discussion took place by teleconference on 26<sup>th</sup> April 2023. The Applicant, Mr Jon Doubt, was present and represented by Mr John Grant, Solicitor. The Respondents were in attendance.
- 4 The Tribunal explained the purpose of the Case Management Discussion and the legal test and asked the parties to address them on their respective positions.
- 5 Mr Grant advised that the Applicants sought an eviction order. The tenancy had been properly brought to an end by the service of the Notice to Quit and a section 33 Notice had been served. The Respondents had accrued significant rent arrears in the sum of £9196.17. Payments had been sporadic. The Applicants wished to sell the property. The Applicants' position was that an eviction order was therefore reasonable.
- 6 Miss McFadden addressed the Tribunal on behalf of herself and Mr Sylla. She explained that they were not disputing the reasonableness of granting the order however she wished to query the date on the Notice to Quit. She thought the term of the tenancy was one year and one day, therefore the 3<sup>rd</sup> December would not be a valid ish date. However, other than that, the Respondents did not object to the granting of the order, provided they had sufficient time to vacate the property. Both she and Mr Sylla apologised for the situation they had found themselves in. Mr Sylla indicated that they were looking to raise funds to offer to purchase the property from the Applicants and would hope to do so before the eviction order was enforced.

### **Relevant Legislation**

- 7 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 end;

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.”

The Cost of Living (Tenant Protection) (Scotland) Act 2022 is also relevant to this application, it having been received by the Tribunal after 28 October 2022.

**Findings in Fact and Law**

8 The Applicant entered into a Short Assured Tenancy Agreement with the Respondents the term of which was 3<sup>rd</sup> December 2013 to 3<sup>rd</sup> December 2014.

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

10 The tenancy continued by tacit relocation on an annual basis.

11 On 1<sup>st</sup> July 2022 the Applicants delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicants required the property back

by 3 December 2022 and a Notice to Quit to the Respondents which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form. The Notices were served by recorded delivery.

- 12 The Notice to Quit terminates the tenancy as at 3 December 2022 which is a valid ish date.
- 13 The Respondents are in arrears of rent in the sum of £9197.17.
- 14 It is reasonable to make the order sought by the Applicant.
- 15 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

### **Reasons for Decision**

- 16 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.
- 17 The Tribunal was satisfied that the Respondents had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988. Whilst the Respondents had queried the date on the Notice to Quit, the Tribunal was satisfied that the 3 December 2022 was a valid ish date. The tenancy had commenced on 3 December 2013 and the tenancy agreement provided that it would continue up to and including the 3 December 2014. Applying the doctrine of *civilis computatio* the Tribunal calculated the term of the tenancy as having commenced at midnight on 3 December 2013. The term of the tenancy was therefore one year and it had continued by tacit relocation on an annual basis.
- 18 The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order. The Tribunal noted the amount of arrears that had accrued which were significant. The Tribunal further took into account the position put forward by the Respondents, namely that they were not opposing the order on the grounds of reasonableness. They were simply seeking additional time. It should be noted that this was an application to which the Cost of Living (Tenant Protection) (Scotland) Act 2022 applies. As at the time of writing this prevents any action being taken to enforce the eviction order prior the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted as specified above, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 which is the 30 September 2023. The Respondents would therefore have a lengthy period of time to try and resolve

matters. On that basis the Tribunal determined it would be reasonable to make the order.

19 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

26 April 2023

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Legal Member/Chair

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Date