



**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/23/1510

**Re: Property at Flat 2 Left (E), 261 Blackness Road, Dundee, DD2 1RX (“the
Property”)**

Parties:

**Mrs Constance Higgins and Mr Martin Higgins, 5 Beechwood Terrace, Dundee,
DD2 1NW (“the Applicants”)**

**Mr Abdullah Zakaria, Mrs Yasmin Zakaria, Flat 2 Left (E) 261 Blackness Road,
Dundee, DD2 1RX (“the Respondents”)**

Tribunal Members:

Alison Kelly (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondents)

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

1. On 11th May 2023 the Applicant lodged an Application with the Tribunal under Rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondents from the property.
2. Lodged with the application were: -
 - a. Short Assured Tenancy Agreement dated and initially running from 5th October 2017 to 4th October 2018 and monthly thereafter, and with monthly rent of £550 per calendar month
 - b. AT5 Notices for each tenant dated 5th October 2017;
 - c. Notice to Quit for each tenant dated 28th February 2023 for 4th May 2023;
 - d. Section 33 Notice for each tenant dated 28th February 2023 for 4th May 2023;
 - e. Section 11 Notice;
 - f. Letter from Dundee Law Centre dated 31st January 2023 indicating that the tenants did want to leave as the accommodation was now too small for them

3. The Application was served on the Respondents by Sheriff Officers on 25th August 2023.

Case Management Discussion

4. The Case Management Discussion (“CMD”) took place by teleconference on 28 September 2023. The Applicants represented themselves. There was no attendance by the Respondents nor any representative on their behalf.
5. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicants needed to provide sufficient evidence to establish the ground of eviction, and also that it was reasonable for the Tribunal to grant the order.
6. Mr Higgins sought an order for eviction in terms of sections 19 and 33 of the Housing (Scotland) Act 1988.
7. The Tribunal were satisfied that the ground had been established and asked Mr Higgins to address the Tribunal on reasonableness.
8. Mr Higgins said that the Applicants live in a three bedroomed house which also has living room, kitchen, bathroom and dining room. They have living with them at the moment their son and his partner and their daughter and her three children, aged 17, 7 and 1. He said that the Applicants wish to evict the Respondents as they need the house for their daughter and her children to live in. Mr Higgins said that the Applicants rent out 9 properties in total but this one is just round the corner from their house and it would enable them to assist their daughter and the children.
9. Mr Higgins said that the property is a three bedroomed house. The Respondents live there with at least four children. They have said it is overcrowded and they are looking to move but cannot as they will be considered intentionally homeless. This is borne out by the terms of the letter from Dundee Law Centre.
10. Mr Higgins said that his wife received a text from the Respondents a few weeks ago indicating that they would be moving out shortly. This has been followed up recently by a text saying that they will be moving out this Monday, 2nd October 2023.

Findings in Fact

1. The parties entered into a Short Assured Tenancy Agreement in respect of the property;
2. The tenancy commenced on 5th October 2017, with the initial term being from 5th October 2017 to 4th October 2018, and monthly thereafter;

3. Notice To Quit and Section 33 Notice were served timeously and correctly, the documents having been endorsed as received by the Respondents;
4. The Application was served on the Respondents by Sheriff Officer on 25th August 2023;
5. The Applicants require the property for their daughter and her three children;
6. The Respondents have indicated that the accommodation is too small for them and that they wish to leave.

Reasons For Decision

The Tribunal were satisfied that the ground of eviction was established.

Section 44 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022 states:

Assured tenancies: discretionary eviction grounds

(1)The Housing (Scotland) Act 1988 is modified as follows.

(2)In section 18 (orders for possession)—

(a)subsections (3) and (3A) are repealed,

(b)in subsection (4), for “Part II” substitute “Part I or II”,

(c)in subsection (6)(a), the words “or Ground 8” are repealed,

(d)in subsection (8), for “subsections (3A) and (4A)” substitute “subsection (4A)”.

(3)In section 19 (notice of proceedings for possession), subsection (5) is repealed.

(4)In section 20 (extended discretion of First-tier Tribunal in possession claims)—

(a)in subsection (1), for “Subject to subsection (6) below, the” substitute “The”,

(b)subsection (6) is repealed.

(5)In section 33(1) (recovery of possession on termination of a short assured tenancy)—

(a)in the opening words, for “shall” substitute “may”,

(b)after paragraph (b), the word “and” is repealed,

(c)after paragraph (d) insert “, and

“(e)that it is reasonable to make an order for possession.”.

(6)In schedule 5 (grounds for possession of houses let on assured tenancies)—

(a)in Part I, Ground 8 is repealed,

(b)the heading of Part I becomes “Certain grounds on which First-tier Tribunal may order possession”,

(c)the heading of Part II becomes “Further grounds on which First-tier Tribunal may order possession”.

The Tribunal now has to decide if it is reasonable to grant the eviction order. The Tribunal therefore has to exercise its discretion in applying the facts to decide if it is reasonable to grant the order. The Applicants require the property for their daughter and her children. The Respondents have indicated that they wish to leave. They did not attend the CMD to put forward their position. The Tribunal considers in those circumstances that it is 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.



Legal Member/Chair

28th September 2023

Date