



**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/23/2098**

**Re: Property at 265D High Street, Kirkcaldy, KY1 1JH (“the Property”)**

**Parties:**

**Mr Malcolm Howes, 20 Strathalmond Road, Edinburgh, EH4 8AF (“the Applicant”)**

**Miss Halszka Golczyk, 265D High Street, Kirkcaldy, KY1 1JH (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order be made for the property in terms of section 33 of the Housing (Scotland) Act 1988 and that it is reasonable to grant the order.**

**Background**

1. This application for a possession order in terms of Rule 66 of the tribunal rules of procedure was first lodged with the tribunal on 27<sup>th</sup> June 2023 and accepted by the tribunal on 11<sup>th</sup> August 2023. A case management discussion was fixed for 6<sup>th</sup> October 2023 at 10 am.

**Case Management Discussion**

2. The tribunal had sight of the application, a tenancy agreement, a Form AT5 signed by the Respondent on 5<sup>th</sup> June 2009, a notice in terms of section 33 of the Housing (Scotland) Act 1988 dated 2<sup>nd</sup> February 2023 and addressed to the Respondent

requiring vacant possession by 25<sup>th</sup> June 2023 , a notice to quit the property also dated 2<sup>nd</sup> February 2023 sent to the Respondent, proof of postal delivery of these notices by Royal Mail, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and an e-mail and sending this to Fife Council.

3. The case management discussion was attended by both the Applicant and the Respondent who represented themselves.

4. The parties had entered into a short, assured tenancy agreement at the property from 25<sup>th</sup> June 2009 to 25<sup>th</sup> December 2009. By memorandum of agreement dated 26<sup>th</sup> October 2009 the parties agreed that the tenancy would continue from 25<sup>th</sup> December 2009 on the same terms and conditions unless terminated on two months' notice by either party. It appeared that the six-month tenancy had rolled over continuously after that date by means of tacit relocation.

5. The Applicant Mr Howes advised the tribunal that the Respondent had been a tenant at the property for some 14 years, he having owned the property for 17 years. He had a good deal of sympathy with her position , she had been a very good tenant, and he was unhappy that he had required to commence eviction proceedings. He set out long term problems with the building in which the property is situated. He was concerned that he could not keep the property to the standard of the required repairing standard for much longer. He said that he was a professional landlord who had a number of properties and relied on the income from these properties in order to support himself. He said that he could not sustain the rental of this property for much longer. It was having a financial impact on him and the longer he had the property he believed the worse it would be. He said that there was a potential for the bills to increase even more and explained that this was a category B listed building. He said that things had become impossible as there were 17 owners in the building, but it seemed that it was only him who was making any effort to arrange upkeep of the building. Apart from the fact that the rental was no longer financially viable for him, rental income being his only source of income, Mr Howes explained that his own health was suffering as a result of the ongoing situation with the property. He talked about the stress and anxiety that the property was causing him, referred to a medical condition and the symptoms he was suffering.

6. Mr Howes explained that the property did not have a factor. He had a number of years before the case management discussion attempted to organise a factor for the property. His attempts to appoint a factor had fallen through as the factor "walked away" from the situation, and Mr Howes believed that this was due to the amount of maintenance required. He said there was a clear lack of interest in maintenance from other owners in the building. He said it was not likely that someone else would take on the factoring of the building as the firm concerned had factored his other properties and had really taken on the property as a favour to him.

7. Mr Howes explained that he approached the council regarding what he considered to be essential repairs. His position was that the council at this stage did not want to become involved. He said that he had tried everything, he had approached conservation bodies, the local MP as well as the council. He referred to the council intervening when a chimney in the same street as the property is situated became dangerous some 22 years ago and the council were forced to carry out an expensive repair. Mr Howes said that whenever he made that suggestion the council indicated

that they could not assist, and he believed that they simply don't have the budget for this type of required repair. Given all the factors he had outlined he said that his financial difficulties with the property, which are likely to increase as time goes on and the effect this is having on his health meant that he felt he had no option but to sell the property.

8. The Respondent Ms Golczyk, explained that she was disabled and unable to work and was reliant on benefits. She was not opposing the eviction order being granted and took no issue with any of the documentation she had received. She had approached the council regarding being rehoused. She had been given to understand that local housing allowance would not cover private rented accommodation and so she was attempting to obtain social housing. During the tenancy the rent had been paid but she was covering the shortfall from benefit. She said that she was awaiting a functional needs assessment and could not have shared accommodation and required an accessible shower. She had been told by the council that she would require to be evicted and after that she would be placed in temporary accommodation which would be shared and that she might require to wait a year to a year and a half to be allocated a one-bedroom flat anywhere in Fife. She understood her application for social housing was also being considered by local housing associations in terms of the common Housing Register. She did not anticipate being rehoused within six months due to the huge demand for social housing. Apart from the requirements for the accessible shower she had no other particular requirements for a new property that might impact on her ability to be rehoused.

9. Ms Golczyk agreed with everything that the Applicant Mr Howes had said regarding the condition of the property and indicated that she believed that he was doing his best in terms of upkeep. She said that things were not getting done and she apologised that she was still at the property but said that she had nowhere else to go. Although she knew it was going to take some time to be rehomed in the social housing sector she said that she did not mind the wait so that when she was allocated a property she would have more security in terms of staying at that property and not being evicted.

10. Both parties confirmed to the Tribunal that they were aware that the Cost of Living (Tenant Protection) (Scotland) Act 2022 is relevant to this application it having been received by the tribunal on 27<sup>th</sup> June 2023.

11. The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair

## **Relevant Legislation**

### **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 over 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 finish.
  - (b) that tacit relocation is not operating; and
  - (c) .....

- (d) The landlord,(or where that 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 two 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 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 finish shall end (without further notice) on the day in 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.

## **Findings in Fact**

12. The parties entered into a short, assured tenancy at the property on 25th June 2009.

13. By way of memorandum of agreement dated 26th October 2009 the parties agreed that the tenancy would continue beyond the initial six-month period on the same terms and conditions subject to the right of either party to terminate the tenancy on two months' notice.

14. The tenancy has continued to roll over after each six-month period on the basis of tacit relocation

15. A notice to quit and a notice under section 33 of the Housing (Scotland) Act 1988 both dated 2nd February 2023 were sent to the Respondent requiring her to quit the property by 25th June 2023.

16 The short, assured tenancy has reached its end.

17. Tacit relocation is no longer operating in relation to this tenancy.

18. The Applicant has given notice to the Respondent that he requires possession of the property.

19. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Fife council in respect of this application

20.The property is within a listed building and a good deal of maintenance is required to keep the property in a tenantable condition.

21. The Applicant requires to sell the property for financial and health related reasons.

22.. The Respondent does not oppose the order and is seeking to be rehoused in accommodation in the social housing sector.

23 The Respondent requires a property with an accessible shower and is awaiting a functional needs assessment.

### **Reasons for Decision**

24. The tribunal was satisfied that the requirements of section 33 of the Housing (Scotland ) Act 1988 had been met in terms of notice and that the tenancy had come to an end and that tacit relocation was no longer in operation. The Applicant had given proper notice to the Respondent that he required possession of the property. The Applicant required to sell the property for financial and health reasons. The Respondent did not oppose an order being granted and understood the landlord's position in relation to the efforts he was making in respect of upkeep of the property. In all of the circumstances the tribunal decided that it was reasonable to grant the possession order.

### **Decision**

### **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**

**6.10.23**

---

**Date**