



**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/21/2915**

**Re: Property at 95 Whiteside Court, Bathgate, EH48 2TP (“the Property”)**

**Parties:**

**Mr Steven Ward, Mrs Janine Ward, Syke, Bo'ness Road, Linlithgow, EH49 7RQ;  
Skye, Bo'ness Road, Linlithgow, EH49 7RQ (“the Applicants”)**

**Mr Artur Spendel, Mrs Agnieszka Spendel, 95 Whiteside Court, Bathgate, EH48  
2TP (“the Respondents”)**

**Tribunal Members:**

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

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined to make an order for repossession against the  
Respondent in favour of the Applicant**

**Background**

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided the following documentation:-
  - (i) Short Assured Tenancy Agreement between the parties together with Form AT5;
  - (ii) Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988; and
  - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to West Lothian Council together with proof of service.

- 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 therefore assigned for the 1 March 2022 to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. 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 Discussions**

- 3 The Case Management Discussion took place by teleconference on 1 March 2022. Mr Steven Ward was present and represented by Mrs Antoinette Orr, Martin and Co. The Respondents were not present. The Tribunal was cognisant that both had been served with a copy of the application paperwork together with the date and time of the Case Management Discussion and therefore proceeded in their absence.
- 4 The Legal Member explained the purpose of the Case Management Discussion. The Tribunal then proceeded to hear from Mrs Orr on behalf of the Applicants.
- 5 Mrs Orr explained that the Applicants sought an order for repossession of the property based on the termination of the short assured tenancy. She explained that there were significant rent arrears and the Respondents had made no attempt to keep to a payment plan to address them. The current balance was £7489.41. Mrs Orr confirmed that a payment had been made on 2 February 2022 in the sum of £600. The Applicants had also received a payment of £170.93 from Aldi Stores in relation to a wage arrestment that had been put in place following the granting of a previous order by the Tribunal for the outstanding rent arrears. Mrs Orr confirmed her understanding that Mr Spindel was in employment with Aldi.
- 6 Mrs Orr explained that many attempts had been made in terms of the pre-action requirements to engage with the Respondents to no avail. Letters and emails had been sent and the Respondents had been given information regarding advice agencies including the Citizens Advice Bureau. They had also been provided with the link to seek financial assistance from the Scottish Government. However there had been no response from them. Mrs Orr confirmed that she was in regular contact with the Respondents. Once a month they were given an update on their rent arrears and a contribution requested. Inspections were also undertaken but access had proved difficult. Mrs Orr confirmed that Mrs Spindel had stated that the tenants want to be rehomed by the local authority.
- 7 In response to questions from the Tribunal Mrs Orr confirmed that she understood there was at least one child in the property. There had been three

noted on the tenancy information at the commencement of the tenancy back in 2014. She estimated the youngest child would be 10 years old. She confirmed the wage arrestment was in place and there had been one payment so far. This was dependent on Mr Spindel's wages therefore there was no indication of whether this would continue and the level of payments to expect. She confirmed that an order for payment had been granted by the Tribunal in the sum of £5930.34. However the arrears continued to accumulate. The wage arrestment did not cover the monthly rent.

- 8 Mr Ward advised that there had been a few minor issues with rent payments however the arrears began to accrue rapidly in summer 2020. It appeared to be a result of the impact of the covid-19 pandemic. Mrs Orr explained that Mr Spindel had been out of work but had resumed employment in July 2020. However no attempts had been made to pay towards the rent arrears at that time. She confirmed that there were no language issues as far as she was aware, the Respondents had recently reported a leak at the property. She reiterated that the Respondents had indicated their intention to remain within the property until such time as they obtained accommodation with the local authority.

### **Relevant Legislation**

- 9 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 finish;

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.

10 The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 are also relevant to this application.

### **Findings in Fact and Law**

11 The Applicants entered into a Short Assured Tenancy Agreement with the Respondents which commenced on 15 August 2014.

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

13 On 13 January 2021 the Applicant also delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 18 July 2021.

14 On 10 September 2021 the Applicant delivered a Notice to Quit to the Respondent which sought to terminate the tenancy on 14 November 2021. The Notice to Quit was in the prescribed form.

15 In terms of the said Tenancy Agreement the Respondents undertook to make payment of rent at the rate of £550 per calendar month.

16 As at the date of the Case Management Discussion arrears in the sum of £7489.41 were outstanding.

17 Despite repeated requests the Respondents had refused or delayed to make payment of the outstanding rent arrears.

- 18 The Applicants have sought to enter payment agreements with the Respondents and have offered assistance.
- 19 The Respondents reside in the property with at least one dependent child.
- 20 The Respondents have indicated to the Applicant's representative their intention to seek accommodation with the local authority.
- 21 It is reasonable to make the order sought by the Applicant.
- 22 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

### **Reasons for Decision**

- 23 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 Respondents had been given the opportunity to take part in the proceedings through service of the application paperwork but had chosen not to do so. On that basis 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.
- 24 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. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 25 The Tribunal accepted that there were rent arrears outstanding in the sum of £7489.41. It was apparent that arrears had accrued significantly over a period of time as a result of sporadic payments by the Respondents, and, whilst a recent payment had been made in February in the sum of £600, the outstanding sum represented over a years rent. Having regard to the submissions made by the Applicants, and noting the employment status of the Respondents, the Tribunal considered that there would be substantial prejudice to the Applicants were the tenancy to continue.
- 26 The landlord's duty to comply with the pre-action requirements was also relevant to the application before the Tribunal and it therefore had to consider whether the Applicants had complied with that duty, and if not, what weight to give to any failure to comply having regard to the particular facts and circumstances of the case. The Tribunal was of the view based on the submissions from Mrs Orr that ongoing efforts had been made to engage with the Respondents in an attempt to address the arrears and to point them in the direct of advice and assistance. The Tribunal also accepted that the Respondents were seeking alternative accommodation with the local

authority. They had not chosen to enter the tribunal proceedings and there was nothing before the Tribunal to contradict the position put forward by the Applicants.

- 27 Accordingly, having regard to the particular facts and circumstances of the case, the Tribunal determined that it would be 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.**

# R. O'Hare

**1<sup>st</sup> March 2022**

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**Legal Member/Chair**

\_\_\_\_\_  
**Date**