



**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/22/4222

Re: Property at 1 South Moa, Rendall, Orkney, KW17 2PB (“the Property”)

Parties:

Mr Greig Sinclair, Riff, Rendall, Orkney, KW17 2PB (“the Applicant”)

Mr Ronald Garson, 1 South Moa, Rendall, Orkney, KW17 2PB (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Angus Lamont (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 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 dated 7 August 2015 together with Form AT5 and signed declaration from the Respondent acknowledging receipt;
 - (ii) Notice to Quit dated 25 August 2022 together with proof of service by recorded delivery dated 26 August 2022;
 - (iii) Notice under section 33 of the Housing (Scotland) Act 1988 dated 25 August 2022 together with proof of service by recorded delivery dated 26 August 2022;

- (iv) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Orkney 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 31st March 2023 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 Discussion

- 3 The Case Management Discussion took place by teleconference on 31st March 2023. The Applicant was represented by Ms Serena Sutherland, Solicitor. The Respondent was not in attendance. The Tribunal noted that he had been served with a copy of the application paperwork together with the date and time of the Case Management Discussion and instructions for joining the case conference and determined to proceed in his absence.

- 4 The Tribunal explained the purpose of the Case Management Discussion and the legal test and asked Ms Sutherland to address it on behalf of the Applicant. Ms Sutherland confirmed that the Applicant wished the Tribunal to make an order for eviction under section 33 of the Housing (Scotland) Act 1988. She referred to the notices that had been served in support of this, with the tenancy having been brought to an end on 9 November 2022. In terms of the reasonableness of making the order she confirmed that the tenancy had been properly brought to an end. In addition the Respondent had stopped paying rent following service of the notices and was now in arrears of just under six months. There had been no recent contact from him so she was unclear as to what his current circumstances were. She was however aware that he resided in the property alone and she understood he had been in contact with the Citizens Advice Bureau albeit she had not received confirmation of that from the Council. The Applicant had written to the Respondent regarding his arrears but had not received any response. Miss Sutherland confirmed that this was the only property the Applicant owned and let. It would soon require renovation to bring its Energy Performance Certificate rating up to a lawful standard once new legislation came into force. He wished to recover possession to carry out works and then his daughter would reside in the property. He would no longer intend on letting the property to tenants.

Relevant Legislation

- 5 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 ish;

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 finish 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

6 The Applicant entered into a Short Assured Tenancy Agreement with the Respondents the term of which was 7 August 2015 to 9 February 2016 and monthly thereafter.

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

- 8 On 26 August 2022 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 9 November 2022 and a Notice to Quit to the Respondent 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.
- 9 The Notice to Quit terminates the tenancy as at 9 November 2022 which is a valid ish date.
- 10 The Respondent stopped making payment of the monthly rent following service of the aforementioned notices.
- 11 The Respondent is in arrears of just under six months rent.
- 12 The Respondent resides alone in the property.
- 13 The Applicant requires possession of the property to carry out renovation works, following which his daughter will take up occupation.
- 14 The Applicant does not let out any other properties.
- 15 It is reasonable to make the order sought by the Applicant.
- 16 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

Reasons for Decision

- 17 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. The Respondent had been given the opportunity to attend the Case Management Discussion and make written representations but had chosen not to participate.
- 18 The Tribunal was satisfied that the Respondent 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.
- 19 The Tribunal noted the increasing arrears which were a result of the Respondent having stopped payments of the monthly rent and now stood at just under six months rent. That was a significant balance. The Tribunal further noted that the Applicant had sent correspondence to the Respondent regarding

his arrears but he had failed to make contact. He had also failed to engage with the Tribunal proceedings therefore the Tribunal had little information regarding his personal circumstances, albeit it was noted he resided alone. As a result the Tribunal had nothing to contradict the position put forward by the Applicant. The Tribunal noted the Applicant's intentions regarding the property, namely that he wished to renovate it with a view to his daughter taking up occupation. The Tribunal therefore concluded that the balance in respect of reasonableness weighed in favour of the Applicant in terms of the prejudice he would incur if the tenancy were to continue, particularly in the face of increasing rent arrears.

20 Accordingly the Tribunal determined to make an eviction order. 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 at the time of writing the 30 September 2023.

21 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.

31 March 2023

Legal Member/Chair

Date