



**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/22/2809**

**Re: Property at 46 Kirkconnel Terrace, Dundee, DD4 0JF (“the Property”)**

**Parties:**

**Mr Gary MacDonald, Ms Jane MacDonald, Milton of Carmyllie, Bungalow, Carmyllie by Arbroath, DD11 2QS; 42 Ethie Terrace, Arbroath, DD11 4AB (“the Applicant”)**

**Ms Danielle Shirkey, 46 Kirkconnel Terrace, Dundee, DD4 0JF (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision (in absence of the Respondent)**

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

**• Background**

1. This was the second case management discussion to consider the application made by the Applicants dated 11<sup>th</sup> August 2022 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules. The CMD took place by teleconference.
2. This application is conjoined with an application for payment of rent arrears.
3. The Applicant is the Landlord in a Short Assured Tenancy with the Respondent who is the tenant. The Applicant has title and interest by virtue of owning the property.
4. The Applicant had lodged and the Tribunal had sight and considered the following documents:-
  - a. Application for repossession dated 11<sup>th</sup> August 2022

- b. Copy Tenancy Agreement for the Property commencing 1<sup>st</sup> September 2017 and ending 2<sup>nd</sup> March 2018
  - c. Copy AT5 Notice dated 21<sup>st</sup> August 2017
  - d. Notice to Quit dated 27<sup>th</sup> January 2022 giving notice to leave by 2<sup>nd</sup> August 2022
  - e. S33 Notice dated 27<sup>th</sup> January 2022 giving notice to remove by 2<sup>nd</sup> August 2022
  - f. Copy certificate of execution of service by sheriff officer of the notice to quit and s33 notice dated 1<sup>st</sup> February 2022
  - g. S11 notice to Dundee City Council
5. The first teleconference was held on 31<sup>st</sup> January 2023 and only the Applicant's representative Mr Jay Lawson attended. The Respondent did not attend nor was she represented on that date but she had been served a copy of the application and the accompanying papers by sheriff officer on 1<sup>st</sup> December 2022 and indicated in an e-mail to the Tribunal on 17<sup>th</sup> January that she had child care issues for her youngest daughter that she had no luck in finding a solicitor to represent her but that she did not want a delay in the process.
6. The Respondent has made several submissions in writing dated from 15<sup>th</sup> December 2022 to 20<sup>th</sup> February 2023. The Respondent advised that while she agreed she had some rent arrears at the property, there were other sums not shown on the applicant's rent statement at least £4600. She advised that she believed universal credit had been paid directly to the landlord and had not been accounted for on their rent statement. She also submitted there were a number of issues with the condition of the house in particular issues with the roof leaking and a draughty window which had been outstanding for months. She also advised that she had 3 children, that she had experienced a significant bereavement and had caused her anxiety and depression. The Applicant lodged on 17<sup>th</sup> January 2023 an application to amend the sum sought to £10,797.05, submissions relating to the Respondent's email in December 2022 and an updated rent statement and pictures of the garden. The Applicant advised in their submissions that they have submitted the relevant paperwork under S33 (1) (a) to (d) of the Housing Scotland Act 1988 and that the only matter for the Tribunal to consider in relation to the eviction application was the question of reasonableness. They go on to submit that the letting agent had gone back through bank statements after the Respondent advised rent payments had been missed and found 4 missing payments that amounted to £1902.50 and they submitted a fresh rent statement confirming this. The Applicants submissions went on to state that the applicants accept there is an issue with the roof but this cannot be resolved until the garden is tidied up and this is the Respondents responsibility.
7. The Tribunal agreed at the CMD that it was not clear if the Respondent was not objecting to the eviction application and the Tribunal unanimously agreed it would not be fair or appropriate to grant an order today but would continue this application to a CMD where the Respondent's views on whether she is not objecting to an order for eviction could be clarified. The Tribunal issued a direction to this effect.

8. The Respondent then lodged an e-mail dated 20<sup>th</sup> February confirming that “I am not objecting to the eviction only the rent arrears. I am in full agreement with the eviction as this house and the issues within it have caused my mental health to worsen over the years. ...I am currently on waiting lists for local authority housing but due to not having an eviction date I am not classed as a priority.” The Respondent went on to confirm that she had been made an offer to settle for payment to the Applicants of £8200.02 but she had refused that and was looking for this to be re -evaluated due to the condition of the Property and made a counter offer of being willing to pay £4000 towards the rent arrears with a payment plan.
9. The Applicants then lodged in an e-mail from their solicitor further written submissions confirming that as the notices had been lodged appropriately, and the Respondent appears to be in agreement with the eviction that it would be reasonable for the Tribunal to now grant the order of eviction. They also mentioned that in order to settle the rent arrears the landlords were prepared to accept an order for £4000.

## **The Discussion**

10. The Legal Member explained the purpose and order of the proceedings today and invited the Applicant’s solicitor to explain what they were seeking and why.
11. Mr Lawson confirmed that he was seeking an order for eviction and believed it would be reasonable for one to be granted today. He also confirmed he was seeking an order for rent arrears in the conjoined case. He confirmed that the paperwork including the Notice to Quit and S33 notice had been served on the Respondent, that there were substantial rent arrears. He advised that although his clients believe the rent arrears are more than £10,000, as per their last statement, his clients had instructed him to advise that if it allows matters to reach a conclusion, that they would be prepared to accept an order for the sum suggested by the Respondent in her e-mail of 20<sup>th</sup> February namely £4,000. He submitted that as the Respondent was agreeing to the order for eviction, and that there are substantial rent arrears granting an order for eviction today would be reasonable.
12. In his written submissions Mr Lawson notes the Respondent is not objecting to any order of eviction and appears to wish it.
13. Mr Lawson confirmed that although his clients, the Applicants do not agree that only £4,000 is due and owing they wish to resolve this dispute and so would accept an order for only £4,000 as suggested by the Respondent. He confirmed that rent is currently being paid by housing benefit and in addition £33.49 is being paid towards the arrears.
14. Mr Lawson under questions confirmed that although his clients would be prepared to accept the Respondent’s offer to pay arrears at the rate of £50 per month as this has not been made in a written offer of time to pay he was not sure the Tribunal could grant such an order and in the absence of that he was seeking an order for £4000 today as well as an order for eviction.

## **Findings in Fact**

1. The Applicant and Respondent entered into a short assured tenancy of the Property for a period of 6 months from 1<sup>st</sup> September 2017 to 2<sup>nd</sup> March 2018
2. The Applicant is the Landlords and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
3. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
4. The Applicant has served a Notice to quit dated 27<sup>th</sup> January 2022 and served by sheriff officer on 1<sup>st</sup> February 2022 terminating the contractual tenancy on 2<sup>nd</sup> August 2022
5. A S33 notice was served on the Respondent by sheriff officer on 1<sup>st</sup> February 2022 giving 6 months' notice that they required possession of the Property by 2<sup>nd</sup> August 2022.
6. The Respondent is in arrears of rent.
7. The amount of arrears is in dispute but the Respondent has indicated that she would agree arrears of £4,000 due to the condition of the Property and the Applicant has accepted that offer.
8. Repair work to the roof is required to be carried out to the property.
9. The Respondent who is the tenant has not vacated the property, but is waiting on an offer of housing from the Council and wishes to leave the Property.
10. A s11 notice in terms of the Homelessness etc. (Scotland) Act 2003 was served on the Local Authority.
11. The Tribunal finds it reasonable that an order for eviction be granted.

### **Reasons for Decision**

12. The Applicants entered into a Short Assured Tenancy with the Respondent on 1<sup>st</sup> September 2017 at a monthly rent of £575. The original term of the tenancy was 6 months and an AT5 form was served prior to that date. The Applicant has served a notice to quit terminating the tenancy on an ish or termination date namely 2<sup>nd</sup> August 2022. They have also given notice of her intention to require possession in terms of S33 of the Act.
13. S33 of the Act says "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 for Scotland may make an order for possession of the house if it is satisfied-
  - a) That the short assured tenancy has reached it's ish
  - b) That tacit relocation is not operating
  - c) That no further contractual tenancy is for the time being in existence and
  - 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.

The period of notice required to be given under S33 (1) (d) above was at the time of service six months, in accordance with the legislation as amended. 6 months' notice has been given.

14. The Short Assured tenancy has reached its ish, tacit relocation is not operating and there is no further contractual tenancy in existence, so the Applicant having given adequate notice in terms of S33 above, can and has applied to repossess the Property. However since April 2020 and Section 2

- and Schedule 1 of the Coronavirus (Scotland) Act 2020, there has been a change to the law on repossessions and before an order for possession is granted the Tribunal has to be satisfied that it is reasonable to grant the order.
15. The Tribunal is able to make any order at a case management discussion as it can after a Hearing. The Tribunal considered carefully the submissions from the Applicant and the written evidence it had before it.
  16. The Tribunal is satisfied the appropriate notices have been served bringing the contractual tenancy to an end and giving notice under S33 as well as notice to the local authority.
  17. The Tribunal considered the submissions of both parties. The Respondent was not present today and did not attend the previous CMD but has made her views clear on writing which indicate that she is keen to leave the Property but is waiting for local authority housing which may only become available if she has an order for eviction, The Tribunal notes that the parties do not agree on the amount of rent that is due and owing but that the Respondent does agree there are arrears and has asked for the claim for arrears to be dropped to £4,000 an offer which the Applicants have accepted.
  18. It would appear the relationship of landlord and tenant has deteriorated and it is in the interests of both parties that the order for eviction is granted. It is therefore reasonable that the order be granted. As the Cost of living (Tenant Protection) (Scotland) Act 2022 does not apply the order will be enforceable after one month when it is sent to the applicants.

- **Decision**

An order for possession was granted.

### **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.**

Jan Todd

**Legal Member/Chair**

**9<sup>th</sup> May 2023**  
**Date**