



**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 (“the Act”)**

**Chamber Ref: FTS/HPC/EV/20/0221**

**Re: Property at 5C Leven Walk, Craigshill, EH54 5AL (“the Property”)**

**Parties:**

**Miss Laura Halil, 35 Stoneybank Road, Musselburgh, EH21 6HJ (“the Applicant”)**

**Mr Francis Leggat, 5C Leven Walk, Craigshill, EH54 5AL (“the Respondent”)**

**Tribunal Members:**

**Jim Bauld (Legal Member)**

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

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

**Background**

By application dated 7 January 2020, the applicant sought an section 18 of the Housing (Scotland) Act 1988 (“the Act”) and in terms of rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. On 5 March 2020 the application was accepted by the tribunal and referred for determination by the tribunal.

A Case Management Discussion (CMD) was set to take place on 14 July 2020 and appropriate intimation of that hearing was given to both parties, at the conclusion of the CMD a further continued CMD was set to take place on 14 August 2020

## **The Case Management Discussions**

1. The Case Management Discussion (CMD) took place on 14 July 2020 via telephone case conference. The applicant and the respondent took part in the telephone case conference.
2. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters
3. The tribunal asked various questions of the parties with regard to the application.
4. The tribunal issued a Discussion note which set out what had occurred during the CMD. Reference is made to that note. Effectively at the CMD, the respondent disputed the existence of the rent arrears which were claimed to exist by the applicant and the respondent was given time to produce evidence that payments had been made.
5. A further CMD took place on 14 August 2020, the applicant took part in that CMD. The respondent did not
6. The applicant explained that she had received no contact from the respondent. He had failed to make the rental payments due both in July and August. He had failed to produce the evidence required by the tribunal
7. The applicant confirmed that she wished the tribunal to grant the order sought in the application

## **Findings in Fact**

8. The Applicant and the respondent as respectively the landlord and the tenant entered into a tenancy of the property on 5 October 2012.
9. The tenancy was a short assured tenancy in terms of the Act
10. The tenant was initially obliged to pay rent of £400 per month. Payments of monthly rent were due on the 5<sup>th</sup> of each month
11. The tenant failed to make payment of rent due in September 2019, October 2019, December 2019 and January 2020
12. On 2 December 2019, the landlord served upon the tenant the notice of proceedings for possession required by section 19 of the Act. This notice was the Form AT6 and set out the grounds for eviction which the landlord intended to rely upon.

13. The grounds for eviction narrated in the Form AT6 included grounds 11 and 12 within schedule 5 of the Act
14. That ground requires there to persistent day in payment of rent and there to be rent arrears. arrears at the date of the service of the Form AT6 and at the date of the hearing
15. As at the date of service of the notice, the tenant was in arrears of three months' rent, namely the payments due on September, October and December, all 2019.
16. As at the date of the hearing, the tenant had also failed to make further payments for rent and at the date of the initial CMD hearing rent arrears amounted to £2,125.
17. Further on 2 December 2019, the applicant also served upon the tenant a notice to quit and a notice in terms of section 33 (1) (d) of the Act. These notices were served on the respondent by recorded delivery post. Said notices became effective on 5 February 2020.
18. The notices informed the tenant that the landlord wished to seek recovery of possession using the provisions of section 33 of the Act.
19. The notices were correctly drafted and gave appropriate periods of notice as required by law.
20. The basis for the order for possession was accordingly established

### **Reasons for Decision**

21. The order for possession was sought by the landlord based on grounds specified in the Act and properly narrated in the notice served upon the tenant. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon that ground and the relevant terms of the tenancy agreement which had been lodged with the application
22. The tribunal accepted the evidence of the landlord with regard to the non-payment of rent by the tenant between September 2019 and the date of the initial CMD. The tribunal accepted that the landlord provided her evidence in a truthful, open and honest manner. The landlord was entirely credible. The respondent claimed at the initial CMD that he had made the disputed payments he was given time to produce evidence of same. He failed to do so and failed to take part in the further CMD. The tribunal concluded that the respondent was untruthful in his submissions at the initial CMD.
23. The grounds relied upon by the landlord in the form AT6 are discretionary In terms of section 18(4) of the Act, where the tribunal is satisfied that the

ground is established, the tribunal may grant the order for possession is satisfied that it is reasonable to grant the order. The tribunal is so satisfied given the evidence presented by the applicant and the misleading submissions made by the respondent at the initial CMD

24. The tribunal was satisfied that the ground had been established and accordingly granted the order sought
25. Further and in any event, if the tribunal is wrong to conclude that it is reasonable to grant the order based on the grounds specified above, Section 33 of the Act states that the tribunal must grant an order for possession of a short assured tenancy where the short assured tenancy has reached its end, that tacit relocation is not operating, where no new contractual tenancy has been agreed between landlord and tenant and where the landlord has given notice to the tenant in the manner required by section 33 (1) (d)
26. The tribunal were satisfied that all of these requirements had been met by the service of the relevant notices and from the evidence given by the landlord.
27. Accordingly the tribunal was satisfied that the reason for the order for possession had been established and that in terms of the relevant section, the tribunal was obliged to grant the order sought
28. The tribunal was satisfied that the ground had been established and accordingly granted the order sought

### **Decision**

29. The order for recovery of possession is 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.**

Jim Bauld



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Legal Member/Chair

14/08/2020  
Date