



**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/20/0542**

**Re: Property at 7 Maltings Road, Kirkcaldy, Fife, KY1 2EP (“the Property”)**

**Parties:**

**Kingdom Initiatives Limited, Saltire Centre, Pentland Court, Glenrothes, KY6 2DA (“the Applicant”)**

**Mr Kenneth Anderson, 7 Maltings Road, Kirkcaldy, Fife, KY1 2EP (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery of possession of the property is granted.**

**Background:**

1. The application for an order for recovery of possession on termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988 (the 1988 Act) was made to the First-tier Tribunal for Scotland Housing and Property Chamber (the Tribunal) on 14 February 2020 by the Applicant's representatives Messrs Shepherd and Wedderburn under rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the Rules of Procedure). The Applicant lodged with the application the Short Assured Tenancy Agreement for the property commencing on 18 November 2017 and with an initial termination date of 28 May 2018 (clause 4) and month to month continuation, AT5 copy signed by the Respondent on 15 November 2017, Notice to Quit dated 25 November 2019 for the date of 28 January 2020, Notice in terms of S 33 of the 1988 Act dated 25 November 2019 for the date of removal on or before 28 January 2020, Proof of service of

Notice to Quit and S 33 Notice on the Respondent by Sheriff Officers on 25 November 2019, copy S 11 Notice send to the local authority on 12 February 2020 and copy lease document between The Fife Council and Kingdom Initiatives Limited for 2-16 all even Smeaton Road Kirkcaldy KY1 2EY and 1-15 all odd Maltings Road, Kirkcaldy KY1 2EP of 10 November 2017 and 13 November 2017.

2. The documents are referred to for their terms and held to be incorporated herein.
3. A Case Management Discussion (CMD) was scheduled for 21 August 2020 at 10 am and both parties were notified of the date and time. Service of the case documents and notification of the CMD on the Respondent by Sheriff Officers was confirmed to have taken place by depositing the documents on 3 August 2020. The intimation to the parties included the information that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application.
4. The Respondent had been given the 14 days notice required in Rule 24 of the Rules of Procedure.

#### **The Case Management Discussion:**

1. Mr Casey, the Applicant's representative attended via telephone link. On behalf of the Applicant Mr Casey moved the application. The Respondent also took part in the telephone hearing.
2. The legal member advised in particular Mr Anderson of the purpose of the CMD and of the legal position regarding the lack of discretion of the Tribunal in cases of this nature due to the wording of the 1988 Act. The legal member advised the Respondent also that whilst the Coronavirus (Scotland) Act 2020 allowed for discretionary powers for S 33 applications, these only applied to cases where the Notices relied on were served after 7 April 2020 once the Coronavirus (Scotland) Act 2020 came into force. The legal member set out the test which applies to the type of application and took the Respondent through the relevant tests to establish whether the facts in the case were agreed or disputed.
3. Mr Casey advised that no rent had been paid since October 2019 and that the landlord was now seeking recovery of possession on termination of the tenancy. He relied on the documentation submitted and advised the Respondent still occupies the property. He also confirmed that a previous application to recover the property had been heard by the Tribunal in 2019 but had been dismissed on agreement of a payment plan between the parties, which had not been adhered to. Thus a fresh Notice to Quit and S 33 Notice had been issued in November 2019.
4. Mr Anderson explained that he simply could not afford the payments agreed with the landlord after the Tribunal proceedings last year. He stated he would really like to stay in the property but he also stated that he agreed that the

tenancy was a Short Assured Tenancy and that the Notice to Quit and S 33 Notice had been issued as stated in the application. He agreed that he had been unable to keep up the previous payment plan and had now become unemployed. He is in the process of getting another job and will apply to the Council to increase his benefits. Universal Credit at present does not cover the rent due. He had not sought legal advice and had not done anything about the matter. He would hope that the landlords would let him remain in the property if he could offer a new payment plan with the help of his father.

5. Mr Casey advised the Respondent to contact the landlord, the Applicant, urgently to see if negotiations might result in the landlord delaying enforcement of any order granted for recovery of possession but again stated to the Tribunal that the Applicant on this occasion is seeking the order to be granted.
6. The legal member confirmed with the Respondent that the facts in the case were not in dispute. The Respondent confirmed this.

**Findings in Fact:**

1. The Applicant is entitled to act as landlord for the property in terms of the lease between The Fife Council and the Applicant dated 10 November 2017 and 13 November 2017.
2. The Applicant and the Respondent entered into a Short Assured Tenancy on for an initial period of 18 November 2017 to an end date of 28 May 2018 (clause 4) continuing thereafter from month to month unless terminated by either party.
3. Document AT5 was receipted and signed by the Respondent on 15 November 2017.
4. In terms of Clause 33.3 the tenancy can be brought to an end by reaching its end date and the Landlord giving two months prior written notice that possession of the house is required in terms of section 33 of the Housing (Scotland) Act 1988 at that end date and by service of a Notice to Quit and then subsequently obtaining an order for recovery of possession.
5. Notice to Quit was served by Sheriff Officers on the Respondent on 25 November 2019 terminating the contractual tenancy to the date on 28 January 2020.
6. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent by Sheriff Officers on the Respondent on 25 November 2019 advising him to remove from the property on or before 28 January 2020.
7. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003 by letter dated 12 February 2020.
8. The Respondent continues to occupy the property at the date of the CMD.
9. No other contractual agreement was entered into between the parties and the Respondent stopped payment of rent since October 2019.

**Reasons for the Decision:**

The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

#### Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

- (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
  - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
- (i) correcting; or
  - (ii) reviewing on a point of law, a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

1. The documents lodged are referred to for their terms and held to be incorporated herein.
2. The Respondent does not dispute the facts.
3. The Tribunal makes the decision on the basis of the documents lodged and the information given at the CMD by the Applicant's representative and the Respondent.
4. In terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:
  - a) *The short assured tenancy has reached its end*
  - b) *That tacit relocation is not operating*
  - c) *That no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and*

*d) That the landlord has given to the tenant notice that he requires possession of the house.*

5. The Tribunal was satisfied on the basis of the documents lodged that that all requirements for recovery of possession in terms of the Housing Scotland Act 1988 are met.
6. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and all essential facts of the case were sufficiently evidenced to make the relevant findings in fact to determine the case. The Tribunal considers that a decision can be made at the CMD in terms of Rule 18 as the facts are clear and not disputed and the documentation allows sufficient findings in fact and it would not be contrary to the interests of the parties as a hearing would not provide further relevant information. The Applicant is entitled to an order being made as the facts clearly support the making of the order applied for.
7. The tenancy document and AT5 document show that the tenancy is a Short Assured Tenancy which has reached its ish. After the initial period the tenancy continued from month to month and clause 33 .3 explicitly stipulated the option of termination of the tenancy by two months notice and the correct documentation being served by the landlord on the tenant.
8. A Notice to Quit and a Notice in terms of S 33 (1) (d) of the Housing (Scotland) Act 1988 had been served on the Respondent on 25 November 2019 by Sheriff Officers.
9. The Tribunal is satisfied that these gave the required 2 months notice in terms of S33 of the 1988 Act and the required 2 month notice in the Notice to Quit in terms of clause 33.3 of the tenancy agreement.
10. The tenancy agreement allowed the tenancy to continue from month to month after the initial period and 28 January 2020 was a valid ish date. Notice to Quit was issued with more than 2 months notice period for the ish date of 28 January 2020. The contractual tenancy agreement was terminated and tacit relocation thus no longer operates. No further tenancy had been entered into between the parties.
11. The Tribunal considered if the Coronavirus (Scotland) Act 2020 applied to this case. The Coronavirus (Scotland) Act 2020 in Schedule 1 paragraphs 3 and 4 alter the provisions in terms of S 33 of the 1988 Act as follows:
  3. *Assured tenancies: extension of notice periods*  
*"4(1)The Housing (Scotland) Act 1988 applies, in relation to a notice served on a tenant under section 19 or 33(1)(d) of that Act while this paragraph is in force, in accordance with the modifications in this paragraph....*
  - (3)*Section 33 (recovery of possession on termination of a short assured tenancy) has effect as if, in subsection (2), for the words "two months" in both places where they appear there were substituted " six months ".*
  4. *Assured tenancies: eviction grounds to be discretionary*

*"3(1)The Housing (Scotland) Act 1988 applies, in relation to a notice served on a tenant under section 19 or 33(1)(d) of that Act while this paragraph is in force, in accordance with the modifications in this paragraph....*

*(4)Section 33 (recovery of possession on termination of a short assured tenancy) has effect as if in subsection (1)—*

*(a)in the opening words, for the word "shall" there were substituted " may ",*

*(b)after paragraph (b), the word "and" were repealed,*

*(c)after paragraph (d) there were inserted ", and*

*(e)that it is reasonable to make an order for possession."*

12. In this case the notices had been served on 25 November 2019 and thus long before the Coronavirus (Scotland) Act 2020 came into force on 7 April 2020. Therefore the amendments do not apply to this case and S 33 of the 1988 Act applies in this case unchanged. If the tests of S 33 (1) of the Housing (Scotland) Act 1988 are met there is no discretion for the Tribunal and the order must be granted.

13. The conditions for an order for possession in terms of S 33 (1) of the Housing (Scotland) Act 1988 have been evidenced by the Applicant in the documentation lodged and agreed by the Respondent and found in fact by the Tribunal. Thus the Tribunal must grant the order for possession of the property in terms of S 33 of the 1988 Act as applied for.

**Outcome: The Tribunal grants the order for recovery of possession of the property.**

#### **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.**

**Petra Hennig McFatridge  
Legal Member**

**21 August 2020  
Date**