

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### Decision 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/21/3018

**Property Address:** 7 Christie Place, Elgin IV30 4HX (“the property”)

**The Parties:** Mr Robert Proctor, Mrs Louise Proctor, 70 Marleon Field, Elgin, Moray IV30 4GE (“the applicants”)

Ms Beata Bojanowska, Mr Jan Bojanowski, 7 Christie Place, Elgin IV30 4HX (“the respondents”)

#### **Tribunal Members:**

Mr Mark Thorley (Legal)  
Mr Gordon Laurie (Ordinary)

#### **Background**

1. The applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) under Rule 66 seeking an order of eviction following upon the issuing of a Notice to Quit. The application was dated 2 December 2021. The application was accompanied by a copy of the Short Assured Tenancy Agreement and various other accompanying documentation.
2. The application was received by the tribunal on 8 December 2021. On 14 December 2021 the application was accepted.
3. A Notice of a direction to the parties was issued on 14 December 2021 seeking representations regarding the Section 33 Notice.
4. The case called by way of case management hearing on 23 February 2022. At that stage parties were required to provide further representations regarding the Section 33 Notice. The second respondent has never entered the proceedings.
5. At a further case management discussion on 17 May 2022 it was agreed that the issue of the Section 33 Notice was no longer a relevant one.

The issue was sent to a hearing in respect of the issue of reasonableness.

## Hearing

At the hearing on 2 September 2022 the following persons attended –

- Mr Charles Beck, Cluny Estate Agents Ltd on behalf of the applicants
- Ms Victoria Gordon from CAB Moray for the respondent
- Ms Kubikowska, interpreter for Mr Jan Bojanowski
- Mr Jan Bojanowski, the respondent

The hearing was interpreted throughout by Ms Kubikowska for Mr Bojanowski.

It was acknowledged at the hearing that arrears of rent now stood at £750. There was another rental payment due in September. Rent was paid but there was a shortfall of between £100 and £500 each month.

It was set out on behalf of the respondent that he was in receipt of universal credit. The amount of universal credit that he received depended upon how much he earned. That was variable. The result of that was that he could not meet the payments of rent in full.

He was also subject to a Trust Deed.

The respondent accepted that he was struggling to afford the property.

He now has his 14 year old daughter living with him. It is a two bedroom property.

## Findings in Fact

1. That the parties entered into a Short Assured Tenancy for the property at 7 Christie Place, Elgin IV30 4HX with a commencement date of 26 June 2015.
2. The respondents were Mr Jan Bojanowski and Ms Beta Bojanowska.
3. Section 33 Notices were served upon each tenant together with Notices to Quit.
4. At the time of the hearing on 2 September arrears of rent had accrued to £750. Arrears were increasing each month.
5. The respondent now has his 14 year old daughter living with him.
6. It is reasonable to grant an order of eviction.

## Reasons for decision

1. The tribunal were considering the issue of reasonableness. All the requisite documentation to bring the tenancy to an end had been served.
2. The respondent now had his 14 year old daughter living with him in a two bedroom property but candidly accepted that he was struggling to make payment of the rent. Rent was increasing on a monthly basis. He was in receipt of universal credit but it was not covering all the rent.
3. He accepted that a Council property may be a cheaper option for him.
4. The tribunal considered that the applicant was entitled to recover the property. Having regard to the issue of reasonableness the respondent had been given an opportunity to keep his rent arrears under control but had struggled to do so. Even although he had his 14 year old daughter living with him the arrears were increasing.
5. The tribunal determined that he should be given a two month period within which to vacate the premises and to secure alternate accommodation.

## Decision

To grant an order of eviction but to allow a period of two months before the eviction could take place.

## 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.**

# M Thorley

Legal Member:

Date: 2 September 2022