



**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/21/0029**

**Re: Property at Flat 7, 24 Crathes Way, Dundee, DD5 3BY (“the Property”)**

**Parties:**

**Mr Simon Doig Gordon, 4 Montague Street Broughty Ferry, Dundee, DD5 2RB  
 (“the Applicant”)**

**Mr Nigel Smith, Flat 7, 24 Crathes Way, Dundee, DD5 3BY (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Ann Moore (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the Property at Flat 7, 24 Crathes Way, Dundee, DD5 3BY under section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicants after expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.**

**The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.**

**Background**

1. By application dated 5 January 2021, the Applicant’s solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession of the property at Flat 7, 24

Crathes Way, Dundee, DD5 3BY (“the Property”) in terms of Rule 66 the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Short Assured Tenancy between the parties signed and dated 30 August 2011, an AT5 also signed dated 30 August 2011, a Notice to Quit and a Section 33 Notice both dated 18 May 2020 together with a Sheriff Officers’ Execution of Service dated 19 May 2020, a rent statement, a Notice under Section 11 of the Homelessness etc. (Scotland) Act with accompanying email to Dundee City Council dated 4 January 2021 and 3 letters dated 27 October, 12 November and 7 December 2020. Further additional submissions were submitted to the Tribunal on 25 January 2021 in relation to the ish date of the tenancy, the Applicant’s reliance on paragraph 10 of Schedule 1 of the Coronavirus (Scotland) Act 2020 in relation to an error in the date on the Section 33 Notice and on the reasonableness of granting the order for eviction.
3. On 19 January 2021, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 12 February 2021 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 17 March 2021. The Respondent required to lodge written submissions by 4 March 2021. This paperwork was served on the Respondent by Vivienne Johnstone, Sheriff Officer, Dundee on 12 February 2021 and the Execution of Service was received by the Tribunal administration.

### **Case Management Discussion**

5. The Tribunal proceeded with the Case Management Discussion on 17 March 2021 by way of teleconference. The Applicant was represented by Mr Kemp from Messrs Thorntons, Solicitors. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
6. The Application was heard together with the Applicant’s action for payment of rent arrears under case reference FTS/HPC/CV/21/0030.
7. The Tribunal had before it the Short Assured Tenancy Agreement between the Applicants and the Respondent signed and dated 30 August 2011, an AT5 dated 30 August 2011, a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 both dated 18 May 2020, a Sheriff Officers’ Execution of Service dated 19 May 2020, rent statements, a Notice under Section 11 of the Homelessness etc. (Scotland) Act with accompanying email

to Dundee City Council dated 4 January 2021 and letters dated 27 October, 12 November and 7 December 2020.

8. Mr Kemp moved the Tribunal to grant an order for eviction under Section 33 of the Housing (Scotland) Act 1988. The Tribunal noted the terms of the Applicant's additional submissions relating to the date on the Notice to Quit that "monthly" in relation to the terms of the tenancy agreement referred to a complete month and that accordingly the Notice to Quit contained the correct date of 31 August 2020. The Tribunal also noted the reliance on Paragraph 10 of Schedule 1 of the Coronavirus (Scotland) Act 2020 in relation to the S 33 Notice. The Tribunal also noted that a Notice in terms of Section 11 of the Homelessness, etc (Scotland) Act 2003 had been served on 4 January 2021 on Dundee City Council.
9. Mr Kemp made submissions with regard to reasonableness under the Coronavirus (Scotland) Act 2020 ("the 2020 Act"). With reference to the rent statement Mr Kemp pointed out there had only been 2 payments towards rent in the last year, the last one being in September 2020 and that the last time there had been a zero balance was in December 2019. He explained that the Tribunal had already granted an Order for payment for £2400 as set out in the Application. The Respondent had not engaged in that process and had not paid the arrears. The arrears were increasing and equated to 14 months arrears, the total arrears being £8400. Mr Kemp submitted that his client had made informal approaches to the Respondent in relation to the payment of arrears and that Messrs Thorntons when formally instructed had sent 3 formal letters to the Respondent on 27 October, 12 November and 7 December 2020 with regard to the arrears, but there had been no response from the Respondent. These letters complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. There had been no engagement from the Respondent despite these letters. He submitted that there had recently been a complaint of a leak from the Property. The Respondent had refused to give his client access to attend to the leak claiming it had been fixed. The cause of the leak was not known, although it had not continued. He submitted there had been some issues with the Respondent refusing access for inspection. Mr Kemp submitted he understood that at some stage the Respondent had been employed by Dundee Football Club, but was uncertain as to whether he still was. The Respondent lived in the Property alone. In his submission it was reasonable in all the circumstances for the Tribunal to make an Order to evict.

### **Findings In Fact**

10. The Applicant let the Property to the Respondent under a Short Assured Tenancy dated 30 August 2011 with a termination date of 29 February 2012. The tenancy continued on a two-monthly basis thereafter. In terms of Clause 2 of the Short Assured Tenancy the Respondent agreed to pay the Applicant a monthly rent of £600.

11. On 18 May 2020 the Applicant's solicitors served on the Respondent a Notice to Quit terminating the tenancy on 31 August 2020. The Applicant's solicitors also served a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 indicating the Applicant intended to take possession of the Property on 31 August 2020. Both notices were served on the Respondent by Sheriff Officers on 19 May 2020.
12. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on Dundee City Council on 4 January 2021 by the Applicant's solicitors.
13. The Respondent has fallen into arrears of rent. The Applicant has an Order for payment previously granted by the First-tier Tribunal for Scotland (Housing and Property Chamber) on 5 August 2020 for £2400.
14. The Respondent has fallen into further arrears. He has not made any payments towards rent since September 2020 when he paid £600. Arrears have increased to £8400.
15. The Applicant's solicitors sent 3 formal letters to the Respondent on 27 October, 12 November and 7 December 2020 in compliance with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. There had been no response to these letters from the Respondent.

### **Reasons for Decision**

16. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made on behalf of the Applicant. The Tribunal concluded that the Applicant was entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its end (termination date); the Notice to Quit brought the contractual Short Assured Tenancy to an end on 31 August 2020; and that the Applicants had given the Respondent notice in terms of Section 33(1) (d) of the Housing (Scotland) Act 1988 as amended by the Coronavirus (Scotland) Act 2020 that repossession of the Property was required by the Applicant. Although the date on the Section 33 Notice was incorrect the Tribunal accepted the written submissions made by the Applicant's solicitors that Paragraph 10 of Schedule 1 of the Coronavirus (Scotland) Act 2020 corrected that error. Accordingly the Tribunal was satisfied that the Section 33 Notice satisfied the statutory requirements. The Tribunal was satisfied that both the Notice to Quit and the Section 33 Notice had been received by the Respondent on 19 May 2020 after having been served on him by Sheriff Officers.

17. The terms of Section 33 of the Housing (Scotland) Act 1988 would usually entitle the Applicant to a right of mandatory repossession of the Property. However under the Coronavirus (Scotland) Act 2020 the Tribunal also has to be satisfied that it is reasonable to grant such an Order. The Tribunal noted the content of the rent statement lodged which showed the Respondent had last had a zero balance on his account in December 2019. The Tribunal noted that since then the Respondent had made two £600 payments to account the last one being on 1 September 2020 and that no further payments had been made. The Applicant produced evidence of persistent non-payment of rent with reference to the tenancy agreement and the rent statements lodged. The Respondent had not disputed the application. A previous order for payment had been granted and had not been disputed by the Respondent. The Tribunal noted that the Applicant has complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 by sending out 3 letters to the Respondent on 27 October, 12 November and 7 December 2020. Unfortunately the Respondent has failed to engage with the Applicant in relation to the tenancy of the Property not only in relation to arrears but also in relation to access. The Tribunal is satisfied on the very clear submissions made by Mr Kemp under the Coronavirus (Scotland) Act 2020 that it would be reasonable to grant the order to evict. The Tribunal found the Applicant was entitled to an order for possession of the Property.

### **Decision**

18. The Tribunal granted an order for 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.**

**S. E**

**17 March 2021**

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**Legal Chair**

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**Date**