



**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/22/0452

**Re: Property at West Quarry Cottage, Ardormie, Alyth, PH11 8HL (“the
Property”)**

Parties:

**Gray & Dale Farmers, Ethie Mains, Inverkeilor, Arbroath, DD11 5SN (“the
Applicant”)**

**Ms Heather MacInnes, West Quarry Cottage, Ardormie, Alyth, PH11 8HL (“the
Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member) and Eileen Shand (Ordinary Member)

Decision

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

Background

On 11th February 2022 the Applicants lodged an application with the Tribunal in terms of Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking an order for eviction of the Respondent in terms of section 33 of the Housing (Scotland) Act 1988.

Lodged with the Application were:

1. Copy Tenancy Agreement dated 30th April 2016 with a date of entry of 1st June 2016 and an ish date of 30th November 2016 and monthly thereafter
2. AT5
3. Notice to Quit dated 28th June 2021 with leave date of 10th August 2021
4. Section 33 Notice dated 28th June 2021 with leave date of 29th December 2021
5. Sheriff Officer’s Execution of Service for items 3 and 4

6. Section 11 notice

The Tribunal wrote to the Applicant's solicitor on 1st March 2022 querying the Notice to Quit as it did not appear to coincide with an ish date.

The Applicant's solicitor replied on 15th March 2022 conceding that the Notice To Quit was invalid and attaching a fresh Notice to Quit, with Sheriff Officer's certificate of service. The Notice was dated 9th March 2022 and brought the tenancy to an end at 30th April 2022. He also cited pages 255 and 256 of Evictions in Scotland by Adrian Stalker (Second Edition) as his authority.

The papers were served on the Respondent by Sheriff Officer on 5th May 2022.

On 7th June 2022 the Applicant's solicitor lodged a statement on behalf of the Applicants regarding the circumstances.

Case Management Discussion

A Case Management Discussion ("CMD") took place by teleconference on 10th June 2022.

The Applicant was represented by Mr Caldwell of Patten & Prentice, Solicitors. Anna James of the Applicants also joined the call. The Respondent represented herself.

The Chairperson explained the purpose of a CMD in terms of Rule 17.

Mr Caldwell confirmed that the Applicants were seeking an order for eviction.

The Respondent was asked for her position. She said that she was trying her best to secure other accommodation. She was waiting for an OT assessment. There was a backlog due to covid. She was living in boxes, she had no carpets and she was ready to go at a moment's notice. She had been in touch with the local authority and was looking to see if other landlords had accommodation. She said that she had to leave, but it was not clear if she meant that she wanted to leave or she felt that she had no option.

The Tribunal asked Mr Caldwell to address them on the validity of the second Notice to Quit, served on 9th March 2022. He said that he accepted that there was an error in relation to the original Notice to Quit. The fresh notice had been served by Sheriff Officer on 9th March 2022. It brought the tenancy to an end at an ish date.

He said that in terms of section 33 of the Housing (Scotland) Act 1988 the Tribunal had to be satisfied that the tenancy had reached its finish, tacit relocation was not operating, that notice had been give by the landlord that possession was required and that it was reasonable to grant the order. He submitted that all of these factors were met. He said that section 33(3) of the Act said that the notice in terms of section

33(1)(d), which is not the Notice to Quit could be served before, at or after the termination of the tenancy.

The Respondent was asked for her comments. She said that it was “over her head”, but that she did not recall receiving the second Notice to Quit.

The Tribunal were satisfied that the second Notice to Quit had been served and were also satisfied that the ground had been met.

Mr Caldwell was asked to make his submission about reasonableness. He went through the terms of the letter lodged by Miss James and outlined the circumstances. The letter suggested that the Respondent had a disability. He added that since January 2022 the Respondent had stopped paying rent. She had told him that she had retained the rent as she did not know what account to pay it in to. He said that he had written to her on 10th May 2022 confirming the details of the account in to which the rent was to be paid, but no payment had been received. He submitted that in all the circumstances it was reasonable to evict.

The Tribunal asked the Respondent about disability. She replied that she would like to leave that to the side just now and deal with the comments about non payment of rent. She was unhappy with what Mr Caldwell had said and as she explained her own position she became more and more upset. She said that she was going to hang up as the Tribunal had already decided. The Chairperson assured her that no decision had been made and that the Tribunal had to listen to all of the facts before it could make a decision. The Respondent was not accepting of that and the Chairperson decided to adjourn for 10 minutes to allow the Respondent to gather her thoughts. Everyone was advised to dial back in at 10.40.

By 10.45 the Respondent had not re-joined the call. The Tribunal did not feel that it had sufficient information before it to allow it to make a decision regarding reasonableness and adjourned the case to a Hearing on it.

Hearing

A Hearing took place by teleconference on 5th August 2022.

The Applicant was represented by Mr Caldwell of Patten & Prentice, Solicitors. Anna James of the Applicants also joined the call. The Respondent represented herself.

The Chairperson introduced everyone and explained how the Hearing would be conducted. She explained what the Application was for and what needed to be established before an order could be granted. She confirmed that at the CMD the Tribunal had decided that the ground of eviction had been met, and that today's hearing was to determine if it was reasonable to grant the order.

The Chairperson confirmed with Mr Caldwell that he was still seeking an order for eviction and he confirmed that he was. He had lodged a rent statement with the Tribunal confirming that the current arrears were £3150.

The Respondent wished to speak first. She had prepared a Statement which she wished to read. She said that she found the process to be intrusive and abusive, and that she was being intruded on by strangers.

The Respondent said that she was not saying that it was not reasonable for the Applicants to seek possession. She had known the property for over twenty years. Five years ago it was a dog which had brought her to live there. She lived in a flat in Cupar and had never been in arrears in her life. She had gold plated references. She alluded to rumours and accusations but did not expand on what those were. She said she signed the lease of the property for a year, and then it went on to a monthly basis. She was not comfortable with that. She did a lot of work on the property, and transformed the garden into a paradise. She said that she feels that she has been portrayed as a down and out.

The Respondent said that she had received a letter from Anna James in September 2021 informing her that the property was now hers and she would confirm bank details for the payment of rent. The Respondent said that she had done everything in her power to get out of the property. Everything was boxed up and ready to go. She had no curtains up.

The Respondent said that she had felt blind sided by the specialist at the CMD. By this she meant Mr Caldwell. She said she had phoned his office several times to obtain account details for payment of rent. She has always paid her rent. In February 2022 she paid it in to the old account. She said that contrary to the solicitor's accusations she had spoken to him about account details. She said that the penny had dropped and she had realised that it would make his job easier if she hadn't paid the rent. She said that she doesn't always get her mail, the cottage is extremely rural. She will leave a cheque for the rent on the mantelpiece.

She confirmed that she was opposed to the order being granted. Her MP had told her that she needed to oppose it.

Mr Caldwell spoke on behalf of the Applicants. He apologised if anything he had said previously had caused offence to the Respondent. That was not his intention. He was a professional doing a job.

Mr Caldwell said that as far as reasonableness was concerned, it was accepted that the property is rural. It lies within farmland. The property was converted with the benefit of a grant in to two cottages. The westmost cottage was rented to the Bowmans. The Respondent took the tenancy of the eastmost cottage in 2016. The Bowmans moved out in 2020. There was a discussion among the Applicants, and they decided to sell the cottages. They had no emotional attachment to them. A buyer was found, and notice was served on the Respondent in June 2021. The notice had a six-month period. The Respondent did not move voluntarily at the end of the period and the purchaser withdrew his interest. Mr Caldwell said that the Respondent had told him that she was actively seeking accommodation. Over the last six months she has explained to him the steps that she has taken. Perth & Kinross Council asked Mr Caldwell for copies of the notices to make sure that they were correct and that they have an obligation to re-house the Respondent. The Council updated him. It was them

who had said that they had difficulty engaging with the Respondent. It was them who said that the OT Report had been obtained.

Mr Caldwell submitted that the Applicants had made a valid and reasonable case for the order to be granted.

Mr Caldwell said that in addition there was the issue of non-payment of rent. He said that he had written to the Respondent on both 10th May 2022 and 1st July 2022 with account details. The arrears are currently £3150, the last payment having been made in February 2022.

The Respondent wished to answer. She said she did not recall receiving a Notice to quit prior to December 2021. A week before the CMD Mr Caldwell phoned her and asked her if she was going to attend. She now thinks that that was devious. She thinks that it is better for the Applicants if she hadn't paid the rent.

The Tribunal asked the Respondent if Perth & Kinross Council had made her any offers of accommodation. She said that they could not process her application until the OT Assessment had been done. The tribunal asked if she had a date for the assessment. She said that she had not as all the OTs were off sick. The tribunal enquired as to the nature of her condition which required an OT assessment. She said that she had mobility issues and lung issues. She is seeking downstairs accommodation. She only uses the downstairs of the tenanted property.

The Tribunal adjourned to consider its decision.

Findings In Fact

1. The parties entered in to a Short Assured Tenancy Agreement with an initial term of 1st June 2016 to 30th November 2016 and monthly thereafter, with an AT5 having been served;
2. The Notice to Quit and section 33 Notice were both correct;
3. Notice to Quit and section 33 Notice were served on the Respondent timeously;
4. The property is rural;
5. The Applicants wish to sell the property together with the adjoining cottage;
6. The adjoining cottage has been empty since June 2020;
7. The Respondent has mobility and lung issues and cannot cope well with stairs;
8. The property is two storey;
9. The property is no longer suitable for the Respondent's needs.

Reasons For Decision

The Tribunal were satisfied from the information put forward that the ground of eviction had been established.

Granting an application for eviction based on section 33 of the Housing (Scotland) Act 1988 provided that the notices are correct and have been served correctly, is normally mandatory. However, in terms of Section 2 and Schedule 1,

Paragraph 3 of the Coronavirus (Scotland) Act 2020 makes the ground discretionary and the Tribunal has to consider reasonableness. The section is as follows:

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.

(2)Section 18 (orders for possession) has effect as if—

(a)subsections (3) and (3A) were repealed,

(b)in subsection (4), for “Part II” there were substituted “Part I or Part II”,

(c)in subsection (4A), after the word “possession” there were inserted “on Ground 8 in Part I of Schedule 5 to this Act or”.

(3)Section 20 has effect as if subsection (6) (no discretion where landlord entitled to possession) were repealed.

(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.”.

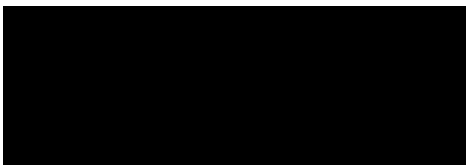
(5)Schedule 5 (grounds for possession of houses let on assured tenancies) has effect as if for the heading of Part I there were substituted “Certain grounds on which First-tier Tribunal may order possession in relation to the period of the Coronavirus (Scotland) Act 2020”.

The Tribunal has to consider all the circumstances relevant when deciding on reasonableness. The Tribunal considered everything that had been said by both parties and decided that on balance it was reasonable to grant the order for eviction. The circumstances taken in to account were that it was over a year since the Applicants had stated their intention by serving notices, it was neither their fault nor responsibility that the Respondent had not been offered alternative accommodation, they were entitled to sell the property, the property next door was vacant and they also wanted to sell it, and that by the Respondent's own admission the property was no longer suitable for her needs.

The Tribunal did not take the rent position in to consideration when considering reasonableness.

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.



05 August 2022

Legal Member/Chair

Date