



**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/22/1288**

**Re: Property at 9C Mar Grove, Musselburgh, East Lothian, EH21 7BW (“the  
Property”)**

**Parties:**

**LAR Housing Trust, F3 Buchan House, Carnegie Campus, Enterprise Way,  
Dunfermline, Fife, KY11 8PL (“the Applicant”)**

**Mr Christopher Witherspoon, 9C Mar Grove, Musselburgh, East Lothian, EH21  
7BW (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Mary Lyden (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order for possession in terms of section 33 of the  
1988 be granted to evict the respondent**

**Introduction**

1. This application is under Rule 66 and Section 33 of the Housing (Scotland) Act 1988. The application seeks an eviction order.
2. Intimation of the application and of the Case Management Discussion (CMD) was effected upon the respondent by Sheriff Officers on 16 June 2022.
3. The CMD took place by teleconference on 29 July 2022 at 10.00 am.

4. The applicant as represented by Miss Claire Mullan of Messrs TC Young Solicitors. The respondent failed to participate. There was no known barrier him doing so.

### Findings and Reasons

5. The property is 9C Mar Grove, Musselburgh, East Lothian EH21 7BW.
6. The applicant is LAR Housing Trust, a charitable incorporated organisation having their principal office at Evans Business Centre, 15 Pitreavie Court, Dunfermline KY11 8UU. The respondent is Mr Christopher Witherspoon. The applicant is the landlord and the respondent is the tenant.
7. The parties entered into a short assured tenancy which commenced on 14 December 2016. An AT5 statutory notice was served before the lease commenced. Monthly rent was stipulated at £600 per month. At the time the written agreement was entered into the respondent had a co-tenant, Ms Katie Witherspoon. On 3 February 2021 she gave notice in writing via email to terminate her joint interest in the tenancy as at 14 March 2021. The respondent has continued as the sole tenant since then.
8. Since the coming into force of the Coronavirus (Scotland) Act 2020 all eviction grounds are discretionary. Additionally, the Notice periods had been extended. The relevant Notice at the time that the Notice to Quit was served was one of 6 months.
9. On 6 October 2021 the applicant served upon the respondent a Notice to Quit. In the terms of the said Notice to Quit, the applicant gave notice to the respondent that he would require to remove from the property on or before 14 April 2022. Further, also on 6 October 2021, the applicant served upon the respondent Notice under Section 33(1)(b) of the Housing (Scotland) 1988 stating that possession was required of the property as at 14 April 2022.
10. The short assured tenancy between the parties reached its end as at 14 April 2022. Tacit relocation is not operating. No further contractual tenancy is in existence. The applicant has complied with the terms of Section 33(1)(d) of the Housing (Scotland) Act 1988. The applicant has established entitlement to recover possession.
11. The Tribunal proceeded to consider the issue of reasonableness.
12. The respondent has been in arrears of rent since March 2021. At the time of application, he was in arrears of rent to the extent of £6,913.45. A timeous Rule 14 A amendment application was subsequently made with a detailed rent

statement disclosing that as of 1 July 2022 the arrears have increased to a level of £8,863.15. No payments of rent have been received since July 2021.

13. The Tribunal took into account the significant arrears of rent which is a relevant factor to weigh up in the reasonableness balancing exercise. It is unreasonable to expect the applicant to maintain the property for the respondent in the absence of him making rental payments.
14. The respondent has not taken advantage of the tenant loan scheme (which closed to new applications from 31 December 2021) nor the tenant grant fund (which can cover rent arrears for the period 23 March 2021 to 9 August 2021).
15. The applicant has served a valid Notice under section 11 of the Homelessness etc. (Scotland) Act 2003. It is most likely that in the event of an eviction order being granted the local authority will make alternative accommodation available for the respondent.
16. The respondent is believed to be in employment and has no known disabilities or other vulnerabilities.
17. In all the circumstances, the Tribunal concluded that it was reasonable to make the Eviction Order sought.

### **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.**



**Legal Member/Chair**

**29 July 2022**

**Date**