



**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 (Act)**

**Chamber Ref: FTS/HPC/EV/23/3088**

**Re: Property at 90 Irvine Road, Largs, KA30 8ES (“the Property”)**

**Parties:**

**Mr David Castelvechi, 37 Walkerston Avenue, Largs, KA30 8EP (“the Applicant”)**

**Mr Lydon Horrocks, Mrs Heather Horrocks, 90 Irvine Road, Largs, KA30 8ES; 90 Irvine Road, Largs, KA30 8ES (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

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

This is an application under section 33 of the Act and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (**Regulations**) in respect of the termination of a Short-Assured Tenancy (**SAT**).

The Tribunal had regard to the following documents lodged in advance of the Hearing:

1. Application received 4 September 2023;
2. AT5 and SAT commencing 1 November 2016;
3. Notice to Quit dated 28 November 2022;
4. Section 33 Notice dated 28 November 2022;
5. Royal Mail track and trace receipts dated 21 December 2022;
6. Section 11 Notice and email serving on local authority dated 3 September 2023.

**Case Management Discussion (CMD)**

The case called for a CMD by conference call on 12 December 2023. The Applicant did not participate but was represented by his solicitor. The Respondents did not participate but were represented by CHAP.

The Respondents did not object to the application.

The Applicant intended to live in the Property as his own residence. He has business interests and is selling his own home to assist with the funding of his business and will move into the Property. He doesn't have any other properties. He is married with children who will live in the Property with him.

The Tribunal was informed by the Respondents that they had been making every attempt to secure alternative accommodation and had contacted the local authority.

They have a 14 year old son who lives with them and is at a local school. The other 2 children are over 21 and also live with them.

The Respondents and one of their children have physical disabilities which the local authority are aware of and will take into account in assessing appropriate accommodation. The local authority appear to be giving the Respondents priority in the circumstances.

The Tribunal explained that any order granted would be subject to the provisions of the **Cost of Living (Tenant Protection) (Scotland) Act 2022** and that meant that the Applicant could not take steps to enforce recovery of possession until the expiry of 6 months after the grant of the order or the repeal/expiry of the Act (whichever was the sooner). It was explained that the Act was due to expire at the end of March 2024.

## **Decision and Reasons**

The Tribunal considered the oral and documentary evidence from the Parties. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a SAT commencing 1 November 2016;
2. An AT5 had been served prior to commencement of the SAT;
3. Notice to Quit and Section 33 Notice had been served dated 28 November 2023;
4. Section 11 Notice had been served on the local authority;
5. The SAT had reached its end and had been terminated;
6. Tacit relocation was no longer operating;
7. No further contractual tenancy was in existence;
8. The Applicant had given the Respondents notice that he required possession;
9. The Applicant required to recover possession of the Property to live in with his family and to sell his existing property to finance his business;
10. The Respondents did not oppose the eviction order and were in contact with the local authority regarding the provision of suitable alternative accommodation for them and their family.

The Tribunal considered all of the evidence and submissions.

The Tribunal were satisfied that Rule 66 had been complied with.

The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought. The Tribunal determined that it would be reasonable to grant the order sought in the circumstances.

The Respondents did not oppose the order and appeared to have the support of the local authority in the provision of suitable alternate accommodation.

The Applicant needed to sell his existing property to fund his business and required the Property to live in for himself and his family.

The Tribunal granted the application for eviction and recovery of possession.

The Tribunal explained to the Applicant's solicitor that the **Cost of Living (Tenant Protection)(Scotland) Act 2022** applied and that meant that the Applicant could not take steps to enforce recovery of possession until the expiry of 6 months after the grant of the order or the repeal/expiry of the Act (whichever was the sooner).

### **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.**

**Alan Strain**

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**Legal Member/Chair**

**12 December 2023**

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**Date**