



**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/23/2459

Re: Property at 25A Burrell Street, Crieff, PH7 4DT (“the Property”)

Parties:

Mr David Taylor, Ms Lucy Taylor, 8A Strathearn Terrace, Crieff, PH7 3AQ (“the Applicants”)

Mrs Gabrielle Grubb, 25A Burrell Street, Crieff, PH7 4DT (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order for the property should be granted in favour of the Applicants and against the Respondent, it being reasonable to grant the order.

1. This application for a possession order in terms of Rule 66 of the Tribunal rules of procedure was first lodged with the Tribunal on 21st July 2023 and accepted by the Tribunal on 11th August 2023. A case management discussion was fixed for 9th October 2023.

2. The Tribunal had sight of the application, a tenancy agreement, a Notice to Quit, a Notice in terms of Section 33 of the Housing (Scotland) Act 1988, proof of service of these documents by recorded delivery, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, an email intimating this notice to the local authority, and a letter to the Respondent in relation to rent arrears accrued in terms of the tenancy and a rent statement.

3. The case management discussion on 9th October 2024 was attended by Mr Gray of Gilson Gray solicitors who represented the Applicant. There was no appearance by or

on behalf of the Respondent, but the application and papers had been served on her by Sheriff officer and the Tribunal considered that it was able to proceed in her absence. After discussion the case management discussion was adjourned for the Applicant's representative to obtain further information on the Respondent's circumstances to allow the Tribunal to consider the issue of reasonableness. A further case management discussion was fixed for 17th January 2024 at 10am.

4. On 23rd November 2023 the Applicants' representative lodged written representations on the Respondent's circumstances.

5. Mr Gray attended the case management discussion on 17th January 2024 on behalf of the Applicants. There was no appearance by or on behalf of the Respondent, but she had been sent the date of the case management discussion by post and had signed for the letter. The Tribunal considered that it was appropriate in terms of the Tribunal rules of procedure, to proceed in her absence.

6. The parties had entered into a short, assured tenancy agreement at the property with effect from 22nd October 2016. The tenancy initially was for period of six months ending on 23rd April 2017. If not brought to an end by either party the tenancy continued on a monthly basis. The Tribunal did not have sight of a Form AT5 but noted that the tenancy agreement contained a clause which indicated that in signing the agreement as she had done, the Respondent was acknowledging that she had received this form before the creation of the tenancy and that the tenancy was a short, assured tenancy.

7. At the first case management discussion Mr Gray advised the tribunal that there rent arrears accruing at the property. The property needed some work with a need for replacement of the front and sash windows and a door. The boiler needs replaced. It was suggested that there had been complaints from neighbours about late night screaming in the street.

8. At the case management discussion on 17th January 2024 Mr Gray advised the tribunal that rent arrears had continued to rise and now stood at £6961, which was the equivalent of 14 months' rent. There had been a friendship between the Applicants and the Respondent, but this had broken down and there was no communication between parties and Mr Gray submitted that it was clear that the Respondent did not intend to pay any rent. Attempts had been made to obtain the unpaid rent but there was no communication between parties.

9. Mr Gray had lodged written representations setting out that the Respondent is 56 and lives at the property with her two sons in their mid-teens. The Applicants knew her from school and believed she works part time at a local petrol station. She has been in arrears of rent for around 3 years and has not paid rent for a year. The Applicants do not know if the Respondent has any entitlement to benefit. This had been raised in the past with the Respondent, but she had indicated that completing the appropriate paperwork regarding benefits was "too much hassle".

10. Mr Gray advised the tribunal that this property is the Applicants' only rental property. The position regarding the rent was unsustainable for them. The main reason for the request for a possession order was financial and it was not known what the Applicants' intentions for the property were should they obtain a possession order.

11. The tribunal had sight of a Notice to Quit and a notice in terms of section 33 of the Housing (Scotland) Act 1988 advising the Respondent that she was required to quit the property by 23rd June 2023 as the Landlords were seeking to recover possession from that date. This date coincided with an end date in the tenancy agreement which now runs on a monthly basis. These documents had been sent by recorded delivery post and Respondent had signed for these as being delivered on 1st April 2023.

12. The tribunal also had sight of a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 which had been sent to local authority by e-mail dated 21st July 2023.

13. The tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

14. The parties entered into a short assured tenancy at the property with effect from the 22nd of October 2016.

15. This tenancy was said to end on 23rd April 2017 but if not brought to an end by either party continued to run a month-to-month basis.

16. The tenancy contained a clause to the effect that in signing the agreement the Respondent was accepting that she had received a Form AT5 before the creation of the tenancy and acknowledge that this was a short assured tenancy

17. A Notice to Quit dated 31st March 2023 in proper form and giving appropriate notice was sent to the Respondent by recorded delivery post requiring her to quit the property by 23rd June 2023.

18. A notice in terms of section 33 of the Housing (Scotland) Act 1988 dated 31st March 2023 was sent to the Respondent by recorded delivery post advising her that the Applicants were seeking possession of the property with effect from the 23rd of June 2023.

19. The short assured tenancy between the parties has come to an end with effect from 23rd June 2023.

20. There is no other tenancy in place between the parties and tacit relocation is not in operation.

21. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to the local authority by e-mail on 21st July 2023.

22. Rent arrears have accrued during the tenancy and these amount to £6961, 14 months' rent as of January 2024.

23. The Applicants are seeking a possession order mainly for financial reasons as the situation is not sustainable for them but their intentions if an order is granted are not known.

24.The Respondent lives at the property with her two teenage sons and is understood to work part time.

25.As of January 2024 the Respondent has not paid rent due in terms of the tenancy for a year.

26.The property requires some work to be done on it and this includes replacement of some windows, a new door and a replacement boiler.

27.There was a friendship between the parties some time ago, but this has broken down and there is no communication currently between the parties and attempts to recover the unpaid rent were not successful.

Reasons for Decision

28.The Tribunal was satisfied that it was appropriate to grant a possession order for this application. The tenancy had been properly brought to an end by the service of a Notice to Quit and notice in terms of Section 33 of the Housing (Scotland) Act 1988 in proper form and giving appropriate notice to the Respondent. On the question of reasonableness, the Tribunal considered the approach set out in *Barclay v Hannah* 1947 SC 245 which indicates that the Tribunal is under a duty to consider the whole circumstances before it. In this application the Respondent had not attended to put forward her position. The Tribunal weighed all the factors before it. There is no communication currently between the parties and the Respondent had simply stopped payment rent with rent arrears standing at 14 months' rent. Although the Respondent has children there was no information beyond this or any suggestion that there was any requirement or desire to stay at the property to meet their needs. Given the rent arrears, the failure to pay rent for a year and the absence of communication the tribunal considered it was reasonable to grant a possession order.

Decision

The Tribunal determined that a possession order for the property should be granted in favour of the Applicants and against the Respondent, it being reasonable to grant the order.

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

Date 17.1.24