

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/23/4032

Re: Property at 24 Middlebank Street, Rosyth, Fife, KY11 2NY (“the Property”)

Parties:

**Mr James Kyle, Cemetery Lodge, 42 Halbeath Road, Dunfermline, Fife, KY12
7RA (“the Applicant”)**

**Miss Laura Duncan, 24 Middlebank Street, Rosyth, Fife, KY11 2NY (“the
Respondent”)**

Tribunal Members:

Ms H Forbes (Legal Member) and Mr L Forrest (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 should be granted.**

Background

1. This is a Rule 66 application received in the period between 19th October and 16th November 2023. The Applicant is seeking an order for possession of the Property. The Applicant lodged a copy of the short assured tenancy agreement between the parties that commenced on 1st May 2015, persisting until 1st November 2015 and monthly thereafter. The Applicant also lodged copy Notice to Quit and section 33 notice dated 1st July 2023 and requiring the Respondent to remove from the Property by 1st October 2023, together with evidence of service on 6th July 2023, correspondence with the local authority, copy section 11 notice with evidence of service, rent statement, and Form AT5.
2. Notification of the application and forthcoming Case Management Discussion was served on the Respondent by Sheriff Officers on 24th January 2024.

The Case Management Discussion

3. A Case Management Discussion took place by telephone conference on 12th March 2024. The Applicant was in attendance. The Respondent was not in attendance. The Tribunal considered the terms of Rule 29. The Tribunal

determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.

4. The Applicant said he was seeking an order for possession on the basis of the short assured tenancy coming to an end. He wishes to sell the Property, and may carry out some repairs to the Property prior to selling. The Applicant explained that he had informed the Respondent of his intention to sell some time ago and it was her position that she cannot afford private rented accommodation and would prefer to obtain social housing. The parties had a good relationship until last summer, but the Respondent no longer responds to attempts by the Applicant to make contact. The Respondent is in arrears of rent. The rent is £550 per month, and the arrears are currently £3000. There is no mortgage on the Property. The Applicant is now retired.
5. Responding to questions from the Tribunal regarding the Respondent's circumstances, the Applicant said he believes the Respondent resides alone. The Respondent previously had two jobs, but has recently left one of the positions. The Applicant is not aware of the current position in terms of the Respondent's employment. The Respondent has not, to the knowledge of the Applicant, been in receipt of any relevant benefits. The Applicant has been in regular contact with the local authority about this matter. It was his position that the housing officer has also been having difficulty contacting the Respondent and the Applicant believes the Respondent's application for housing has now been put on hold.

Findings in Fact and Law

6.
 - (i) Parties entered into a short assured tenancy agreement in respect of the Property that commenced on 1st May 2015, persisting until 1st November 2015 and monthly thereafter
 - (ii) Notice to Quit and Section 33 Notice were served on the Respondent.
 - (iii) The short assured tenancy has reached its finish date.
 - (iv) The contractual tenancy terminated on 1st October 2023.
 - (v) Tacit relocation is not in operation.
 - (vi) The Applicant has given the Respondent notice that they require possession of the Property.
 - (vii) It is reasonable to grant the order for possession.

Reasons for Decision

7. Section 33 of the Act provides that the Tribunal may make an order for possession if satisfied that the short assured tenancy has reached its finish,

tacit relocation is not operating, the landlord has given notice to the tenant that they require possession, and it is reasonable to make the order.

8. The Tribunal considered the Notice to Quit and Section 33 notice had been completed and served correctly. Accordingly, the contractual tenancy has been terminated and tacit relocation is not in operation. The Applicant has given the Respondent notice that they require possession of the Property.
9. In considering reasonableness, the Tribunal took into account the fact that the Applicant has made attempts to contact the Respondent with a view to agreeing a payment arrangement for the rent arrears, and to discuss the failure to pay the monthly rent. The arrears now amount to over five months or rent. The application papers show there has been previous discussion about entering into a payment arrangement, facilitated by the local authority, but the arrangement failed, and the Respondent is no longer paying rent. The Respondent is not engaging with the Applicant or making any attempt to pay the rent and address the arrears. There seems to be no reasonable prospect of the situation improving if matters remain as they are, and it is likely the arrears will continue to increase, to the detriment of the Applicant.
10. The Tribunal considered that a *prima facie* case had been made by the Applicant in respect of reasonableness. The Tribunal took into account the limited information given regarding the Respondent's circumstances, however, the Respondent did not appear at the CMD or make any representations in respect of reasonableness.
11. In all the circumstances, the Tribunal considered it reasonable to grant the order.

Decision

12. An order for possession of the Property is granted under section 33 of the Housing (Scotland) Act 1988. The order is not to be executed prior to 12 noon on 15th April 2024.

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.

H Forbes

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Legal Member/Chair

12th March 2024
Date