

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision 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/22/3538

Re: Property at 7 Mosstower, Eckford, TD5 8LF (“the Property”)

Parties:

The Buccleuch Estate Agents, Estate Office, Bowhill, Selkirk, TD7 5ES (“the Applicant”)

Mrs Laura Adele Marsh, 7 Mosstower, Eckford, TD5 8LF (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and David MacIver (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted and that an order for recovery and possession should be granted in favour of the Applicant

Background

1. This is an application in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for recovery of possession in terms of section 33 of the Act.
2. The Tribunal had before it the following documents:
 - a) Application dated 27th September 2022 received by the Housing and Property Chamber on DATE 2019.
 - b) Short Assured Tenancy Agreement signed 26th January 2008.
 - c) Form AT5 signed by the parties on 24th January 2008.
 - d) Notice to Quit dated requiring vacant possession as at 29th July 2022 with sheriff officer certificate of intimation dated 21st January 2022.
 - e) Section 33 Notice dated 21st January 2022 stating that the tenancy terminates on 29th July 2022 with sheriff officer certificate of intimation dated 21st January 2022.

- f) Section 11 Notice noting date of raising proceedings 27th September 2022 with email service dated 27th September 2022.
3. On 1st December 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 27th January 2023 at 10am at by teleconferencing. The letter also requested all written representations be submitted by 1st December 2022.
 4. On 7th December 2022, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 7th December 2022.
 5. This case should be read in conjunction with FTS/HPC/CV/3539.

Case Management Discussion

6. The Tribunal held a Case Management Discussion (“CMD”) on 27th January 2023 at 10am at by teleconferencing. The Applicant was not present but was represented by Mrs Claire Young, Solicitor, TC Young. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Tribunal considered the Application. The Respondent did not make written representations prior to the CMD.
7. The last contact from the Respondent was on 28th July 2022 to advise that the Respondent was waiting for funding to be put into her account. She noted that she planned to move, buy a car and pay off the rent arrears. The Respondent did not move and did not pay the arrears. Mrs Mullen told the Tribunal from October 2018 the Applicant had sent 6 text messages, 13 letters, 1 email and had made 2 visits to the Property. Mrs Mullen said the Universal Credit has been in payment to the Respondent since April 2019 but there had not been any payments made by the Respondent. The Applicant then applied for direct payments from Universal Credit. Payments have been made at the rate of £325 per month and £66.98 by arrears direct. There is a shortfall of £98.02 per month. The current arrears are £11177.03. This is equivalent of 22 months of non payment.
8. Mrs Mullen told the Tribunal that the lack of contact has had an affect upon the Applicant’s ability to manage the Property. The Property is a terraced cottage situated with 5 others. All the other cottages have had new PVC windows replacing the old ones. The Respondent has not allowed access to the Property for the windows to be changed. There is currently an upgrade of the heating system which will not be able to be undertaken while the Respondent continues not to contact the Applicant.
9. Mrs Mullen also told the Tribunal that the Respondent received a no offer of local authority housing in October 2021 but she did not accept the offer. The Applicant telephoned her on 16th December 2021 to advise that Eildon Housing Association was in the position to offer the Respondent a new property. The

Respondent did not answer the phone so the Applicant also texted this message. The Respondent did not accept his offer of rehousing.

10. Mrs Mullen believes that the Respondent is still living in the Property. She wrote to the Respondent on 6th January 2023. This was sent by recorded delivery which was signed for by the Respondent on 7th January 2023.

Findings in Fact

11. The parties entered into a Short Assured Tenancy on 29th January 2008 with until 29th July 2008 then month to month thereafter. An AT5 was signed by both parties on 24th January 2008. The rent payments of £490 are due on the 29th day of each month.
12. The Housing and Property Chamber received an application on 27th September 2022.
13. A Notice to Quit and section 33 notice were served by sheriff officers by certificate of intimation dated 21st January 2022.
14. The Respondent has failed to maintain rent payments and has not contacted the Applicant since 28th July 2022.
15. The Applicant has not been able to undertake repairs and maintenance due to the Respondent ceasing communication.
16. There are no issues of reasonableness before the Tribunal to prevent an order for eviction being granted.

Reasons for Decision

17. The Tribunal was satisfied that there were no other issues of reasonableness before them, that the notices had been served in an appropriate manner and that a Short Assured Tenancy had been entered into by the parties. Given this the Tribunal was satisfied all appropriate paperwork had been served and the Order for repossession was granted.

Decision

18. The Applicant is entitled to for an order of for recovery of possession.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Gabrielle Miller

27th January 2023

Legal Member/Chair

Date