



**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/22/1954**

**Re: Property at 16/5 Hopetoun Street, Edinburgh, EH7 4GH (“the Property”)**

**Parties:**

**Mr Eamon Burns, c/o Ballantynes, 30 Stafford Street, Edinburgh, EH3 7BD (“the Applicant”)**

**Ms Lisa Sim, 16/5 Hopetoun Street, Edinburgh, EH7 4GH (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and David Fotheringham (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order against the Respondent**

**Background**

- 1 By application to the Tribunal the Applicant sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant provided the following documentation:-
  - (i) Short Assured Tenancy Agreement between the parties dated 14 November 2008 together with Form AT5;
  - (ii) Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988 both dated 11 April 2022 together with certificate of service by Sheriff Officers dated 12 April 2022;
  - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Edinburgh City Council with proof of service; and

(iv) Rent Statement.

- 2 By Notice of Acceptance of Application dated 17 August 2022 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 2 November 2022.
- 3 A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondent by Sheriff Officers. No written representations were received from the Respondent in response to service of the application paperwork.

### **Case Management Discussion**

- 4 The Case Management Discussion took place by teleconference on 2 November 2022. The Applicant was represented by Ms Mhairi-Clare Galleta of Ballantynes letting agent. The Respondent was not present. The Tribunal noted that she had received service of the application paperwork together with notification of the date and time of the Case Management Discussion and therefore determined to proceed in her absence.
- 5 Ms Galleta addressed the Tribunal on behalf of the Applicant. She advised that the Applicant resided outwith the United Kingdom and was looking to sell his rental properties in Scotland. The Respondent had therefore been served with the notice to quit and notice under section 33 of the 1988 Act. The Respondent had also stopped paying rent on or around the time the notices were served, having stated that she required to save money in order to find alternative accommodation. However the Applicant had not received any further rental payments from the Respondent. Ms Galleta advised that the Respondent had been offered assistance in obtaining alternative accommodation, specifically mid-market rental properties. However she had refused said offers of assistance. The rent arrears continued to accrue and now stood at £5960.
- 6 In response to questions from the Tribunal Ms Galleta confirmed that the Respondent had two dependents living with her who attended the local school. That was one of the reasons that support had been offered to her to obtain alternative accommodation in the area. Ms Galleta advised that the Respondent was believed to be self-employed. The Respondent had been sent emails making her aware of the rent arrears and providing advice on support with links to the government website and Citizens Advice Bureau however she had failed to respond.

### **Relevant Legislation**

- 7 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988, as amended

by the Coronavirus (Scotland) Act 2020, the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 and the Coronavirus (Extension and Expiry) (Scotland) Act 2021:-

**33     *Recovery of possession on termination of a short assured tenancy.***

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its finish;

b) that tacit relocation is not operating; and

(c). . . . .

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and

(e) that it is reasonable to make an order for possession.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;

(ii) in any other case, six months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

**Findings in Fact and Law**

8     The Applicant entered into a Short Assured Tenancy Agreement with the Respondents which commenced on 14 November 2008.

- 9 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 10 On 12 April 2022 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 15 June 2022 and a Notice to Quit to the Respondent which sought to terminate the tenancy as at that date. The Notice to Quit was in the prescribed form.
- 11 The 15 June 2022 is a valid ish date under the terms of the tenancy between the parties.
- 12 Under Clause 7 of the said tenancy agreement the Respondent undertook to pay rent at the rate of £700 per month. The rent was subsequently increased to £745 per month.
- 13 The Respondent has accrued rent arrears in the sum of £5960 as at 28 October 2022.
- 14 The Respondent has been directed to support by the Applicant in order to address the arrears.
- 15 The Applicant lives outwith the United Kingdom.
- 16 The Applicant wishes to sell the property in order to withdraw from the Scottish rental market.
- 17 The Respondent resides with two dependents in the property.
- 18 The Applicant has offered the Respondent assistance in obtaining alternative accommodation which she has declined.
- 19 It is reasonable to make the order sought by the Applicant.
- 20 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

### **Reasons for Decision**

- 21 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Respondent had been given the opportunity to participate in the proceedings but had chosen not to do so. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no issues to be resolved.
- 22 The Tribunal was satisfied that the Respondent had been served with a valid Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988.

The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.

- 23 The Tribunal noted the assistance that had been offered to the Respondent by the Applicant's agent, both in terms of sourcing alternative accommodation and addressing the rent arrears. The Respondent had simply failed to engage. The Tribunal further noted the increasing rent arrears which had now reached £5960. There was no explanation from the Respondent as to why the rent had went unpaid for a significant period of time, other than the fact that she had stated to the Applicant's agent that she required funds in order to move. That was not however in the view of the Tribunal a valid excuse for the ongoing failure to pay rent. The Tribunal also took into account the Applicant's intentions regarding the property, namely that he wished to sell it in order to withdraw from the Scottish rental market which he was entitled to do. Whilst the Tribunal had some concerns about the two young dependents residing in the property with the Respondent, ultimately, against the background outlined by the Applicant, the Tribunal concluded it would be reasonable to grant an eviction order. There was nothing before the Tribunal to contradict the position put forward on behalf of the Applicant.
- 24 The Tribunal therefore determined to make an eviction order in this case. The decision of the Tribunal was unanimous.

### **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.**

R O'Hare

02/11/2022

---

**Legal Member/Chair**

---

**Date**