



**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/21/0555

Re: Property at 18B Forbes Street, Alloa, FK10 1NF (“the Property”)

Parties:

Mr Brian Wardlaw, 91 Banchory Place, Tullibody, FK10 2SL (“the Applicant”)

**Mr Stuart Thomson, Mrs Isabella Townsley, 18B Forbes Street, Alloa, FK10 1NF
 (“the Respondent”)**

Tribunal Members:

Yvonne McKenna (Legal Member) and Helen Barclay (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 was a case management discussion (CMD) to consider the application made by the Applicant dated 10th March 2021 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules. The CMD took place by teleconference because of the current requirements for social distancing due to the COVID-19 pandemic.
2. The Applicant is the Landlord in a Short Assured Tenancy (SAT) with the Respondent who is the tenant. The Applicant has title and interest by virtue of owning the Property.
3. The Applicant was not present on the teleconference call. His Representative Ms Euphemia Matheson attended together with an Observer from the Applicant’s Letting Agency, Northwood Letting, Ms Ann Johnston. The Respondent did not attend but intimation of the proceedings had been served by sheriff officers dated 5th April 2021.

4. The Applicant had lodged, and the Tribunal had sight and considered the following documents: -

- a. Application for repossession dated 10th March 2021.
- b. Copy Tenancy Agreement dated 4th April 2011.
- c. Copy AT5 Notice dated 4th April 2011 at 12.46.
- d. Notices to Quit dated 3rd September 2020 giving notice to leave by 2nd November 2020.
- e. Section 33 Notices dated 3rd September 2020.
- f. Execution of service of Notices by recorded delivery dated 5th April 2021 and proof of delivery.
- g. Section 11 Notice to Clackmannanshire Council dated 10th March 2021 and confirmation from the Council of receipt of the notice.

The Case Management Discussion

5. The Legal Member explained the purpose of the CMD and advised that the Tribunal could do anything at a CMD which it may do at a Hearing.

6. The Respondent did not attend. The Applicant's Representative said that she had not anticipated that the Respondent would attend the CMD. She said that she was aware from her discussions with them, that the First-Named Respondent has been instructing Alloa Citizens Advice Bureau (CAB), although they are not instructed to appear on behalf of the Respondent today.

7. The Applicant's Representative explained that she was seeking an order for possession today. She confirmed that a SAT was created in May 2011. The AT5 was signed by parties in advance of the Lease and was with the case papers. After the initial term, the lease continued on a month-to-month basis. The Notices to Quit served on 3rd September 2020 brought the contractual tenancy to an end on 2nd November 2020 and prevented tacit relocation operating. The section 33 Notices expired 5th March 2021. The Notices were validly served and met the requirements of section 33 of the Housing (Scotland) Act 1988 (the 1988 Act). The law now requires the issue of reasonableness now to be considered. She invited the tribunal to find that it is reasonable to grant the order today.

8. In her submission regarding reasonableness, she said that the Respondent has been assisted by Alloa CAB and that an application for homelessness had already been made to the local authority who were awaiting the outcome of today's hearing for this to be progressed. She said that the First-Named Respondent had received advice that it was not in his interests to object to this application. She went on to state that the Respondent, Mr Stuart Thomson has had various mental health issues, and his behaviour, at times, has been quite odd. He has been reporting various issues which require repair at the Property and when the Letting Agents has attended there are no issues. One example given, was that the Respondent has reported raw sewage flowing through the Property, as an urgent issue. When the Letting Agent and contractor attended, there were no such issues, although the Respondent had unscrewed the four screws attaching the toilet to the floor of the bathroom. He had also taken items off the walls reporting them as being dangerous

(e.g., an extractor fan). He had removed the doors leading to the children's bedrooms reporting them as dangerous. Concerns have also been raised about the Respondent's chaotic living conditions.

9. Ms Matheson said that the Respondent's actions do not amount to anti-social behaviour but that the Respondent is clearly struggling. Prior to the date of the CMD there had been rent arrears although these are now cleared. The Respondent has been unable to meet his tenancy obligations from time to time and leads a sporadic home life. The Respondent's needs would be better served by being housed by the Local Authority. She said that the requirements of section 33 had been considered easier to meet rather than waiting for one of the Grounds contained in Schedule 5 to the 1988 Act to arise, which would only prolong the Respondent's difficulties. It was therefore considered reasonable for both parties that the Respondent progresses a homelessness application and the Applicant can recover the Property and remarket it. It was accepted that the Second Named Respondent is no longer living in the Property and is believed to have been living in a care home for some time.

10. Ms Johnston from Northwood Letting Agents also addressed the Tribunal for the Applicant. She said that the Letting Agent had taken over managing the Property approximately 3 years ago. Mr Thomson and his two children aged 11 and 9 reside at the Property. She said that over the years the landlord has re-fitted the kitchen at the Property. The Respondent reported that cupboards had fallen off the wall. It transpired he had taken them off the wall himself. He reports that kitchen worktops are dangerous as they are at different levels although she said that there is a difference of less than 1 cm between them. He has removed an extractor fan from a wall and reports the bathroom and the bath are sinking into the floor and feels that the ceiling of the Property is unsafe. He has refused contractors entry to the Property stating that it is too dangerous to allow entry. Ms Johnston said that she always attends at the Property with another colleague as the Respondent makes allegations about members of staff. There is a hole in the wall of the living room leading directly outside which the Respondent refuses to be fixed maintaining that his cat sits there to get fresh air. He removed a vent which had been there previously. It has been very difficult to allow contractors entry such as when the gas safety certificate required to be renewed. It had been due in July 2020 and it took until December 2020/January 2021 for the Respondent to allow access and then only after threatening with an application to the Tribunal for access.

11. Ms Johnston has been extremely concerned about the welfare of Mr Thomson and has spoken personally with Ms. Shirley Rich from Alloa CAB because of this. She said that she had wondered why they had heard nothing from the CAB after years of Mr Thomson saying that the Property was making him suicidal. She was told that Mr Thomson was in touch with Alloa CAB by text and e-mail on a weekly basis and that the CAB believed that it was in Mr Thomson's best interests to be allocated his own council house. She was told that the CAB had persuaded him that the council had a higher specification than private lets and that he may be allocated a better property and that Mr Thomson seemed in agreement with that. He had realised that it was in his best interests for the eviction order to be granted and for him to get a new place for him and the children. He was happy not to defend this application and wished his application for re-housing to be progressed with the Local Authority.

Findings in Fact

12. The Applicant and the Respondent have entered into a short assured tenancy of the Property for a period of 6 months from 1st May 2011 to 2nd November 2011.

13. The Applicant is the Landlord and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.

14. The tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.

15. The rent is £475 per calendar month.

16. The Applicant has served by sheriff officers, a Notice to Quit and Section 33 Notice on the Respondent terminating the tenancy on 2nd November 2020 being a termination date of the tenancy and giving 6 months' notice that they required possession of the Property by 5th March 2021.

17. The Respondent, who is the tenant, has not vacated the property or responded to the Notice to Quit or Section 33 Notice.

18. The Respondent has been served notice of this application and has made no legal or factual representations in relation to this Application.

19. A section 11 Notice in terms of the Homelessness etc. (Scotland) Act 2003 was served on the Local Authority on 10th March 2021.

Reasons for Decision

20. The Applicant has entered into a Short Assured Tenancy with the Respondent.

Section 33 of the 1988 Act states, "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 for Scotland may make an order for possession of the house if it satisfied-

- a) That the short, assured tenancy has reached its term
- b) That tacit relocation is not operating
- c) That no further contractual tenancy is for the time being in existence and
- 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.

The period of notice required to be given under section 33(1)(d) above is six months, in accordance with the legislation as amended.

21. The Short-Assured Tenancy has reached its term, tacit relocation is not operating and there is no further contractual tenancy in existence, so the Applicant having given adequate notice in terms of Section 33 above, can and has applied to repossess the Property. However, since April 2020 under Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020, there has been a change to the law on

repossessions and before an order for possession can be granted, the Tribunal must be satisfied that it is reasonable to grant the order.

22. The Tribunal carefully considered the submissions from the Applicant and the written evidence it had before it.

23. The Tribunal is able to make any order at a CMD as it can after a Hearing. The Respondent has not made any written representations nor attended this CMD so there are no representations by the Respondent that the Tribunal can consider. Given the submissions put forward by the Applicant the Tribunal is satisfied that it is reasonable to grant the order for eviction. In the absence of any submissions by the Respondent that it would not be reasonable to grant an order for eviction and balancing the interest of both parties the Tribunal found it was reasonable to grant an order for repossession at this CMD and that a Hearing is not required.

Decision

24. An order for eviction is granted.

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.

30th April 2021


Yvonne McKenna
Member/Chair

Date