



**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/22/2096**

**Re: Property at 20 Heather Gardens, Dundee, DD3 0NX (“the Property”)**

**Parties:**

**Ms Shona Duncan, 4 Holly Road, Broughty Ferry, Dundee, DD5 2LZ (“the Applicant”)**

**Mr Mark Craig, Charlene Duthie, 20 Heather Gardens, Dundee, DD3 0NX (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Frances Wood (Ordinary Member)**

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

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

**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 together with Form AT5;
  - (ii) Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988; and
  - (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Dundee City Council with proof of service.

- 2 By Notice of Acceptance of Application 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 the 7 October 2022 to take place by teleconference due to the restrictions imposed by the Covid-19 pandemic. 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 Respondents by Sheriff Officers. No written representations were received from the Respondents in response to service of the application paperwork.

### **Case Management Discussions**

- 3 The Case Management Discussion took place by teleconference on 7 October 2022. The Applicant was represented by Mr David Gray of Gilson Gray Solicitors. The Respondents were not present. The Tribunal was cognisant that both had been served with a copy of the application paperwork together with the date and time of the Case Management Discussion and therefore determined to proceed in their absence.
- 4 The Tribunal noted that the Applicant sought an order under section 33 of the Housing (Scotland) Act. The notices served upon the Respondents appeared to be valid, therefore the question for the Tribunal was whether it was reasonable to make an eviction order. Mr Gray was invited to make submissions on this point.
- 5 Mr Gray noted that notices had been served on the Respondents in November 2021 and expired in June 2022. The Respondents had therefore had the benefit of over six months notice. It was now coming up on 11 months since the notices were officially served. There had been no contact from the Respondents during that period and nothing to suggest they had been trying to source alternative accommodation, such as a request for a reference. It was therefore reasonable that the Applicant should be able to recover possession of the property.
- 6 In response to questions from the Tribunal Mr Gray advised that he was not aware of any dependents in the property. He had heard via a third party that the second named Respondent may have left the property in April 2022 but that had not been formally confirmed. She was therefore still considered to be an occupant. Mr Gray believed that the first named Respondent may be in employment, either as an employee of a powder coating company in Dundee, or as an owner of the company.
- 7 Mr Gray advised that the Applicant had raised separate proceedings with the Tribunal for payment of rent arrears. An order had been granted in the Applicant's favour. There was an ongoing issue with payment of rent. The arrears as at May 2022 had been approximately £5000, and were continuing to rise. Mr Gray confirmed that the Applicant had not yet sought to enforce the order, as they were awaiting the outcome of the present application. There had

been no attempt by the Respondents to pay the outstanding sum, nor make any contact in response to the application for payment. The Applicant was therefore facing a considerable balance of arrears, leaving her out of pocket. In response to questions from the Tribunal Mr Gray advised that he did not know if there was a mortgage over the property.

### **Relevant Legislation**

- 8 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**

- 9 The Applicant entered into a Short Assured Tenancy Agreement with the Respondents which commenced on 15 October 2017.
- 10 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 11 On 18 November 2021 the Applicant delivered a Notice under section 33 of the Housing (Scotland) Act stating that the Applicant required the property back by 14<sup>th</sup> 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.
- 12 In terms of the said Tenancy Agreement the Respondents undertook to make payment of rent at the rate of £675 per calendar month.
- 13 The Respondents are in arrears of rent. As at May 2022 the arrears were approximately £5000. The arrears are continuing to increase.
- 14 The Respondents have no dependents who reside with them at the property.
- 15 The first named Respondent is believed to be in employment.
- 16 The Respondents have failed to engage with the Applicant.
- 17 It is reasonable to make the order sought by the Applicant.
- 18 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

### **Reasons for Decision**

- 19 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 Respondents had been given the opportunity to take part in the proceedings through service of the application paperwork but had chosen not to do so. On that basis 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.

- 20 The Tribunal was satisfied that the Respondents 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.
- 21 The Tribunal accepted that there were significant rent arrears outstanding which had resulted in the Applicant obtaining an order for payment from the Tribunal. Despite taking such action the arrears were continuing to increase as a result of the Respondents' failure to make ongoing payments of rent. The Tribunal therefore considered that there would be substantial prejudice to the Applicant were the tenancy to continue due to the financial impact of the loss of rent. The Tribunal also took the view based on the submissions from Mr Gray that ongoing efforts had been made to engage with the Respondents in an attempt to address the arrears. They had however failed to make contact and had not presented any information to contradict the position put forward by the Applicant. On that basis, the Tribunal considered that the Applicant was entitled to recover possession of the property. The Respondents had been given significant notice, it being nearly a year since the Notice to Quit and section 33 Notice were served upon them, and would have had ample opportunity to seek alternative accommodation.
- 22 Accordingly, having regard to the particular facts and circumstances of the case, the Tribunal determined that it would be 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.**

# Ruth O'Hare

**7 October 2022**

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**Legal Member/Chair**

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**Date**