



**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/22/2603

**Re: Property at 1 Easttown Cottage, Tarland, Aboyne, Aberdeenshire, AB34 4TD
("the Property")**

Parties:

**The MacRobert Trust, a registered Scottish charity, Cromar, Tarland, Aboyne,
Aberdeenshire, AB34 4UD ("the Applicant")**

**Mr Gordon Thomson, 1 Easttown Cottage, Tarland, Aboyne, Aberdeenshire,
AB34 4TD ("the Respondent")**

Tribunal Members:

**Martin McAllister (Legal Member) and Eileen Shand (Ordinary Member) ("the
tribunal")**

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the Respondent be granted an order for possession
of the Property.**

Background

- 1. This is an application under Section 33 of the Housing (Scotland) Act 1988
("the 1988 Act") for recovery of possession of the Property. It is dated 28th
July 2022.**
- 2. The application was accepted for determination on 9th November 2022.**

Case Management Discussion

- 3. A case management discussion was held by teleconference on 31st
January 2023.**

4. Mr Angus Donaldson of the Applicant was in attendance and was accompanied by Ms Michelle Bennett.
5. The Respondent was present.

Preliminary Matters

6. The legal member explained the purpose of a case management discussion.
7. Mr Donaldson said that the application had been necessary because the Respondent had not removed himself from the Property by 20th July 2022 and was still residing in it.
8. Mr Donaldson submitted that the tribunal had sufficient information to determine the application and that there was no other evidence which he could bring before a Hearing.

9. Findings in Fact

- 9.1 The Applicant and the Respondent are parties to a short assured tenancy agreement in respect of the Property dated 19th October 2017.
- 9.2 The term of the tenancy was 20th October 2017 to 20th April 2018 (both dates inclusive).
- 9.3 The tenancy agreement provided for the tenancy to continue on a month to month basis if it was not brought to an end on 20th April 2018.
- 9.4 The Applicant served a Section 33 Notice on the Respondent on 19th May 2022 requiring vacation of the Property by 20th July 2022.
- 9.5 The Respondent remains in occupation of the Property.
- 9.6 The required notice in terms of the Homelessness etc. (Scotland) Act 2003 has been given to the local authority.

10. Findings in Fact and Law

- 10.1 The tenancy continued by tacit relocation from 20th April 2018 until it was brought to an end by service of the Notice to Quit on 19th May 2022.
- 10.2 The tenancy ended on 20th July 2022.
- 10.3 The Applicant is entitled to recover the Property because the tenancy has been brought to an end.

10.4 It is reasonable for the order of eviction to be granted.

Documents

11. The Tribunal considered the documents which had been lodged with the application:

- 11.1 Copy of the short assured tenancy agreement dated 19th October 2017.**
- 11.2 AT5 Form relating to the short assured tenancy.**
- 11.3 Notice to Quit served on 19th May 2022 requiring the Respondent to leave the Property by 20th July 2022.**
- 11.4 Section 33 Notice served on 19th May 2022.**
- 11.5 Sheriff Officer's certificate of citation in respect of service of the Notice to Quit and Section 33 Notice.**
- 11.6 Copy of Notice to local authority under Section 11 of the Homelessness etc (Scotland) Act 2003.**
- 11.7 Copies of pre action requirement letters sent to the Respondent.**
- 11.8 Copy rent statements.**

Applicant's Position

12. Mr Donaldson said that the Applicant was seeking recovery of the Property in terms of Section 33 of the Housing (Scotland) Act 1988. He said that the lease had continued on a month to month basis from 20th April 2018 and that the Applicant had sought to regain possession of the Property as at 20th July 2022 by serving a notice to quit on 19th May 2022. He said that 20th July 2022 was an ish date and that the tenancy finished on that date.

13. Mr Donaldson said that the Applicant had decided to seek an order of eviction because of the level of rent arrears. He referred the tribunal to a rent statement which had been submitted which showed the rent arrears at 1st July 2022 to be £9,000. He said that the Respondent had resumed payment of rent after that date and that some payments of £50 to reduce arrears had been received and that the current level of arrears was £8,850.

- 14. Mr Donaldson said that the rent statement shows that the arrears of rent started in 2021 and that the Applicant had tried to assist the Respondent to address these. He referred the tribunal to pre action requirement letters which had been sent to the Respondent in which he was directed to agencies who may be able to assist and which also contained a statement that the Applicant was “willing to work towards agreeing a payment plan.”**
- 15. Mr Donaldson said that the level of rent arrears was so significant that it was reasonable for the Applicant, a registered charity, to recover the Property notwithstanding that payment of rent had resumed in July 2022.**

Respondent’s Position

- 16. Mr Thomson said that he is a fifty four year old man who lives alone. He said that he had got into financial difficulties around the start of the pandemic. He said that he had been working as a taxi driver until July 2019 when health issues forced him to stop. He said that he awaits a formal diagnosis. He said that he initially had been able to continue rental payments because he had inherited money from his mother who had died in 2016.**
- 17. Mr Thomson said that he had funds which he could not access. He said that, when he was almost sixteen years old, he returned home from work to find a representative of National Savings in his family home because he had won a significant prize from a Premium Bond. He said that his mother did not allow the representative to speak to him because of his age and that his mother dealt with the matter. He said that he never discussed the matter with his mother and that, weeks before her death in 2016, she had told him that he had a large sum of money and that he would get it. Mr Thomson confirmed that, when his mother died, a solicitor dealt with her estate and that he was a beneficiary and received money. He indicated that the “National Savings money” was separate and that he has been unable to access it because National savings could not trace the bank account where he believes the money to be. He said that he engaged a solicitor in January 2022 and that she is corresponding with National Savings and trying to arrange for Mr Thomson to have access to his mother’s former home to access papers. He said that his brother succeeded to the tenancy of his mother’s house and that he maintains that any relevant papers relating to the funds have been given to him.**

18. Mr Thomson said that he had been able to resume rental payments in July 2022 because he had been successful in a claim for Universal Credit. He said that a telephone claim had been made by him. He said that he has no outstanding claims for benefits.

19. Mr Thomson accepted that he had received letters from his landlord which referred to agencies who may be able to provide advice or assistance with regard to his housing matters. He said that the letters only contained email addresses for these agencies and not telephone numbers. He said that he does not have internet access.

20. Mr Thomson said that he had no additional evidence which he could put before the tribunal at a Hearing.

The Law

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;

(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 two months, that period;

(ii) in any other case, two 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.

Discussion and Determination

21. The tribunal determined that the Applicant had properly served the notice to quit, that the Respondent had been given the appropriate period of notice and that the appropriate notice had been given to the local authority in terms of the Homelessness etc (Scotland) Act 2003.

22. The tribunal determined that the tenancy had been brought to an end at the ish date by service of the notice to quit.

23. The tribunal noted that, prior to the amendments to the 1988 Act, it would have no discretion and would have been required to grant the order of eviction. By virtue of the amendments introduced by the Coronavirus (Recovery and Reform) (Scotland) Act 2022, the tribunal does have discretion and requires to consider reasonableness.

24. The tribunal did not consider that either party had additional evidence to put before it and that there was therefore no reason to arrange for an evidential Hearing to be arranged.

25. The tribunal accepted that the Respondent had encountered difficulties with his health and also a financial issue with regard to missing funds. The Respondent had been sent letters by his landlord which had directed him to agencies who might have been able to assist. The tribunal considered that, although the Respondent did not have internet access, the letters did provide sufficient information for him to make contact with the agencies by telephone even though telephone numbers

were not included. He had been able to access Universal Credit by making a telephone claim.

26. The tribunal noted that the Applicant, which is a charity, wanted to recover possession of the Property and that, although it was relying on the provisions of Section 33 of the Act, was driven to do so because of the rent arrears.

27. On balance, the tribunal determined that it was reasonable to grant the application and to make the order. In coming to its determination, the tribunal noted the particular circumstances of the Respondent but considered that the level of arrears were so significant that it was reasonable to grant the order of eviction notwithstanding that payment of rent had recommenced.

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.

Martin McAllister

Martin J. McAllister
Legal Member
31st January 2023