



**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 (“The Act”).**

**Chamber Ref: FTS/HPC/EV/23/1254**

**Re: Property at 23 Manse Avenue, Whitburn, West Lothian, EH47 0BB (“the Property”)**

**Parties:**

**Mr Robert Gillies, 7/11 Murieston Road, Edinburgh, EH11 2JJ (“the Applicant”)**

**Ms Lindsay Beaton, 23 Manse Avenue, Whitburn, West Lothian, EH47 0BB (“the Respondent”)**

**Tribunal Members:**

**Andrew Cowan (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 to grant an order against the Respondent, for possession of the Property under section 33 of the Housing (Scotland) Act 1988.**

**Background**

1. This is an Application dated 18th April 2023 and made in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The Applicant is the landlord of the Property, and the Respondent is the tenant, in terms of a Short Assured Tenancy Agreement between the parties, that commenced on 18th November 2017 at an agreed (current) rent £600 per month.
2. The Applicant is seeking an order for possession under section 33 of the Housing (Scotland) Act 1988.

3. The Application called for a case management discussion (“CMD”) by conference call at 10 AM on 18th August 2023. The Applicant joined the conference call. There was no appearance by or on behalf of the Respondent. The Application and information about how to join the CMD had been served on the Respondent by sheriff officers on 21st July 2023. The Tribunal accordingly decided to proceed in the absence of the Respondent.
4. The Applicant had provided, with his Application, copies of the Short Assured Tenancy Agreement between the parties, together with form AT5. He had also provided copies of the notice to quit and section 33 notice which he had served upon the Respondent, together with proof of service of these notices. He provided evidence that he had served notice upon the Local Authority as required by Section 11 of the Homelessness etc (Scotland) Act 2003. The Tribunal was satisfied that all these documents and forms had been correctly and validly prepared in terms of the provisions of the Act, and procedures set out in the Act had been correctly followed and applied.
5. Accordingly, the only matter for the Tribunal to determine was whether it is reasonable to grant the eviction order.
6. By e-mail dated 19th July 2023 the Applicant had set out for the Tribunal his reasons as to why he considered it would be reasonable to grant an eviction order. The Applicant expanded on his reasons by oral evidence at the CMD.
7. The Applicant confirmed to the Tribunal that he believes the Tenant continues to occupy the Property. He is unable to confirm if any other individual resides at the Property with the Respondent.
8. The Applicant explained that as at the date of the CMD the Respondent has rent arrears of £8006. He explained that the tenant has made no payment of rent since February 2023. The Applicant has applied to the DWP to have direct payments of any housing benefit (to which the Respondent may be entitled) made payable directly to the Applicant. He has been advised by the DWP the tenant is not entitled to such payments due to the level of earnings she has from employment. The Applicant believes the Respondent to be currently in full time employment as a carer. The Applicant has a mortgage over the property and is required to make regular payments of £340 per month towards that mortgage. The Applicant does not consider that it is financially viable to continue to allow the tenant to remain in the property. The Applicant intends to sell the property to try to recover some of the losses as a consequence of the non-payment of rent by the tenant.
9. Having considered the evidence presented by the landlord the Tribunal was satisfied that there was a sufficiency of evidence to establish that it is reasonable to grant an order of eviction.

## **Findings in Fact**

- a. The parties entered into a tenancy agreement whereby the Applicant let the property to the Respondent by virtue of a Short Assured Tenancy.
- b. The Applicant has served a notice under section 33 of the Act together with a notice to quit, which competently ended the contractual tenancy.
- c. The Respondent has failed to vacate the property by the date set out in the notices.
- d. The Short Assured Tenancy has reached its ish.
- e. Tacit relocation is not operating.
- f. The Applicant has served a notice on the relevant local authority under section 11 of the Homelessness etc (Scotland) Act 2003.
- g. It is reasonable that an eviction order is granted.

## **Decision**

10. The Tribunal have determined to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988. The order cannot be executed prior to 12 noon on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

## **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.**

**Andrew Cowan  
Legal Member/Chair**

**18<sup>th</sup> August 2023**

**A Cowan**

