



**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/20/0385

**Re: Property at 17 Rankin Court, Kilmarnock, Ayrshire, KA3 7QU (“the
Property”)**

Parties:

**Easton Property Auchans Ltd, 2 Newfield Drive, Dundonald, Ayrshire, KA2 9EW
 (“the Applicant”)**

**Ms Joyce Cummings, 17 Rankin Court, Kilmarnock, Ayrshire, KA3 7QU (“the
Respondent”)**

Tribunal Members:

Fiona Watson (Legal Member)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order is granted against the Respondent for
possession of the Property under section 33 of the Housing (Scotland) Act 1988.**

- Background
 1. An application dated 5 February 2020 was submitted to the Tribunal under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondent upon termination of a short assured tenancy agreement.
- The Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 10 August 2020. The Applicant was represented by their letting agent, Miss Farrell. The Respondent was personally present. The Tribunal noted that the notices lodged with the application were dated 21 August 2018 and sought repossession of the Property on 7 November 2018, but the Sheriff Officer’s report following service which was lodged stated that the notices had been served on 6 June 2019.

Miss Farrell indicated that there had been further notices served and the wrong set had been lodged with the application. The CMD was adjourned for the correct notices to be lodged.

3. A further CMD took place on 24 September 2020. The Applicant was again represented by their letting agent, Miss Farrell. The Respondent was neither present nor personally present. The Tribunal was satisfied that the Respondent had been duly notified of the date and time of the CMD and that the CMD could proceed in the Respondent's absence. The Applicant had lodged the correct set of notices following the previous CMD.
4. A separate application by the Applicant seeking a payment order against the Respondent under Rule 70 of the Rules in respect of rent arrears and under case reference FTS/HPC/CV/20/0384 was heard at the same time.
5. The Applicant moved for the order for repossession to be granted as sought. The parties had entered into a Short Assured Tenancy Agreement. The Applicant had served a Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") on the Respondent. The Respondent had failed to remove from the Property and continued to reside therein. The Applicant required repossession of the Property.

- Findings in Fact

6. The Tribunal made the following findings in fact:
 - (i) The parties entered into a Short Assured Tenancy Agreement ("the Agreement") which commenced 7 November 2015. The Agreement stated that the term was for a fixed period from 7 November 2015 until 7 May 2016 (both days inclusive) and monthly thereafter until termination either party;
 - (ii) A Notice to Quit and notice under section 33 of the 1988 Act were served on the Respondent on 6 June 2019 by Sheriff Officer;
 - (iii) The Notice to Quit and notice under section 33 of the 1988 Act required the Respondent to remove from the Property by 7 August 2019;
 - (iv) The Respondent had failed to remove from the Property and continued to reside therein.

- Reasons for Decision

7. The Tribunal was satisfied that the terms of section 33 of the 1988 Act had been met: namely that the tenancy had reached its end; tacit relocation was not operating; a notice had been served in terms of that section giving at least 2 months' notice; and no further contractual tenancy was in existence. Accordingly, the Applicant was entitled to the Order for Repossession as sought.

- Decision

8. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

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.

**Fiona Watson
Legal Member/Chair**

**24 September 2020
Date**