

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/19/0325

**33 Corseford Avenue, Johnstone PA5 0PE
(‘the Property’)**

PARTIES:

**Mr Alan Lilley, 244 Millfield Hill, North Barr, Erskine PA8 6JL
(‘the Applicant’)**

Represented by LM Properties Paisley Ltd, 50 Glasgow Road, Paisley PA1 3PW

**Miss Stephanie Burnfield, 33 Corseford Avenue, Johnstone PA5 0PE
(‘the Respondent’)**

TRIBUNAL:

Joseph C Hughes (Legal Member) [sitting alone]

Ronnie Lee (Tribunal Clerk)

DECISION [in absence of the Respondent]

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the
Tribunal’) determined that the Application should be decided without a full
hearing and granted an Order for Possession.**

BACKGROUND

By Application received on 31st January 2019, the Applicant sought an Order under Section 33 of the Housing (Scotland) Act 1988 and in terms of Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ('the Regulations').

On 1st March 2019, the Application was accepted by the Tribunal and referred for determination by the Tribunal.

A Case Management Discussion ('CMD') was set to take place on 17th May 2019 and appropriate intimation of that hearing was given to both parties. The Respondent was invited to make written representations but she did not submit any written submissions to the Tribunal.

The Tribunal considered the Application and all documentary productions. The Tribunal had sight of the Short Assured Tenancy Agreement, Form AT5, Notice to Quit, Section 33 Notice, Recorded Delivery receipts relating to the said Notices, Section 11 Notice and email to Local Authority intimating Section 11 Form. This email was produced today.

THE CASE MANAGEMENT DISCUSSION

The Case Management Discussion ('CMD') took place on 17th May 2019 at 11.30am within Glasgow Tribunals Centre, York Street, Glasgow.

The Applicant did not attend in person Mr Robert Downie (Lettings Manager) and Ms Lynsey McMinn (Director) both of LM Properties Paisley Ltd attended on behalf of the Applicant.

The Respondent did not attend.

The Tribunal was advised that the Respondent is still understood to be residing in the property.

The Tribunal explained the purpose of the CMD and the powers available to the Tribunal to determine matters. The Tribunal asked various questions with regard to the Application. Updated information was noted including obtaining a copy of the email intimation given to the Local Authority on 31st January 2019. This was not within the papers.

The Applicant wishes the Tribunal to grant the Order for Possession as sought in the Application.

FINDINGS IN FACT

(i)The Applicant and the Respondent are respectively the Landlord and Tenant. They entered into a tenancy of the property on 27th July 2014.

(ii)The Tenancy was a Short Assured Tenancy in terms of the Act.

(iii)On 12th November 2018 the Applicant served upon the Tenant a Notice to Quit and a Notice in terms of Section 33 (1) (d) of the Act. This was successfully served by Royal Mail Recorded Delivery.

(iv)The Notices informed the Tenant that the Landlord wished to seek recovery of possession using the provisions of Section 33 of the Act. The Respondent was due to leave the property as at 27th January 2019.

(v)The Notices were correctly drafted and gave appropriate periods of notice as required by law.

(vi)The Short Assured Tenancy Agreement between the Applicant and the Respondent has reached its end as at 27th January 2019. Tacit relocation is not operating. No further contractual tenancy is in existence.

(vii) A section 11 Notice was emailed to Renfrewshire Council on 31st January 2019 by the Applicant's representatives.

(viii)The basis for the Order for Possession was accordingly established.

REASONS FOR DECISION

Rule 17 of the Regulations provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would decide the application without a hearing.

Section 33 of the Act states that the tribunal must grant an Order for possession of a Short Assured Tenancy where the Short Assured Tenancy has reached its end, that tacit relocation is not operating, where no new contractual tenancy has been agreed between the Landlord and the Tenant and where the Landlord has given Notice to the Tenant in the manner required by Section 33 (1)(d) of the Act.

The Tribunal was satisfied that all of these requirements had been met by the service of the relevant notices and having regard to the evidence given by the Landlord.

Accordingly, the Tribunal was satisfied that the reason for the Order for Possession had been established and that in terms of the relevant section, the Tribunal was obliged to GRANT the Order sought.

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.

Joseph Hughes

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'Joseph C Hughes'
Legal Chair

17th May 2019.