



**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/19/3601

**Re: Property at 25 Inkerman Court, Ayr, South Ayrshire, KA7 1HF (“the
Property”)**

Parties:

Mr John Scott, Mungo's Well, 7 Shanter Way, Ayr, KA7 4PF (“the Applicant”)

**Mr David McCallum, 25 Inkerman Court, Ayr, South Ayrshire, KA7 1HF (“the
Respondent”)**

Tribunal Members:

Jan Todd (Legal Member)

Decision in absence of the Respondent

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

1. This was a Case Management Discussion (CMD) to consider the application made by the Applicant dated 6th November 2019 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules.
2. The Applicant is the owner of the Property and Landlord. He did not attend the hearing in person but his letting agent Ms Marjorie Douglas from CDK Galbraith who is representing him in these proceedings, did attend and moved that the application be granted.
3. The Respondent did not attend nor did the Respondent lodge any written representations. The application and accompanying papers were served on the Respondent by Sheriff Officer letter box service on 7th January 2020 so the Tribunal is satisfied the Respondent has had notice of the CMD.
4. The Applicant had lodged and the Tribunal had sight and considered the following documents:-
 - a. Copy Tenancy Agreement for the Property dated 31st October 2017
 - b. Copy AT5 Notice dated 31st October 2017

- c. Notice to Quit and S33 notice dated 25th July 2019
- d. Proof of posting of notice to quit by recorded delivery
- e. S11 notice to South Ayrshire Council and proof of posting dated 7th November 2019

The Hearing

5. The Legal Member explained the purpose of the hearing and advised that the Tribunal could do anything at a case management discussion which it may do at a hearing.
6. The Respondent, who is the tenant, did not attend the hearing and had made no written representations prior to the hearing despite notice of the hearing and the above documentation being served on him by Sheriff Officers on 7th January 2020.
7. The applicant's agent Ms Douglas confirmed her client still wished to pursue repossession of the Property. She advised that at the time they served the Notice to Quit they believed he may be living with family in Kirkcaldy and so sent 3 copies of the Notice to Quit and S33 notice to the Property address, the address they had for family at Balfour Street in Kirkcaldy and to the address of the guarantor under the lease. The Notice to Quit and S33 Notice are contained in the one notice and were all posted on 25th July 2019. The Applicant had lodged 3 track and trace receipts showing the notices had been delivered or collected.
8. Ms Douglas confirmed that the Notice to Quit had the relevant prescribed information included on the back of the Notice to Quit and produced a copy showing that.
9. Ms Douglas also advised that the Respondent had attended at her offices around the date he was given notice to leave namely 30th September when he advised that he had no where else to stay and would be repaying the rent due.
10. Ms Douglas further advised there were substantial arrears of rent outstanding as no further rent has been paid and there has been some damage to the Property.
11. Ms Douglas confirmed she was looking for an order for possession today.

Findings in Fact

12. The Applicant and Respondent have entered into a short assured tenancy of the Property for a period of 6 months to 30th April 2018.
13. The Applicant is the Landlord and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
14. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
15. The rent is £ 900 per calendar month.
16. The Applicant has served by recorded delivery a Notice to quit and S33 notice on the Respondent terminating the contractual tenancy and giving notice that he required possession of the Property by 30th September 2019 being the termination date of the tenancy.

17. The Respondent who is the tenant has not vacated the property or responded to the Notice to Quit or S33 notice.
18. The Respondent has been served notice of this application and has made no representations in relation to this Application.

Reasons for Decision

19. The Applicant has entered into a Short Assured Tenancy with the Respondent.
20. S33 of the Act says "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 for Scotland shall make an order for possession of the house if it is satisfied-
 - a) That the short assured tenancy has reached its term
 - b) That tacit relocation is not operating
 - c) That no further contractual tenancy is for the time being in existence and
 - 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.

The period of notice required to be given under S33 (1) (d) above is two months, in accordance with the legislation and the terms of the tenancy.

21. The Short Assured tenancy has reached its term, tacit relocation is not operating and there is no further contractual tenancy in existence, so the Applicant having given notice in terms of S33 above, is entitled to repossess the Property. There is no discretion to the Tribunal in these circumstances.
22. The Tribunal is able to make any order at a case management discussion as it can after a Hearing.
23. Considering the Respondent had made no representations and did not attend the hearing, the Tribunal felt it was reasonable, and balancing the interests of both parties, appropriate and just to grant a full order for repossession at this hearing.

- Decision

An order for eviction is granted.

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.

Jan Todd

03 February 2020

Legal Member/Chair

Date