



**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/21/3096**

**Re: Property at 28 Buttquoy Crescent, Kirkwall, Orkney (“the Property”)**

**Parties:**

**Mr John Twatt, Mrs Catherine Twatt, 32 Buttquoy Crescent, Kirkwall, Orkney  
 (“the Applicants”)**

**Mr Dean Barber, 28 Buttquoy Crescent, Kirkwall, Orkney, KW15 1JH (“the  
 Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mr G Laurie (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
 Tribunal”) determined that an order for possession should be granted in favour  
 of the Applicants.**

**Background**

1. This is an application received on 14<sup>th</sup> December 2021, made in terms of Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) seeking an order for possession. The Applicants’ representative included with the application a copy of an undated Offer to Let, a Form AT5 which was signed on 30<sup>th</sup> October 2010, a Form AT6, a Notice to Quit and section 33 Notice dated 18<sup>th</sup> May 2021 and requiring the Respondent to remove by 20<sup>th</sup> November 2021, with evidence of service, and a section 11 Notice to the local authority. The Applicants’ representative indicated that the tenancy commenced on 20<sup>th</sup> November 2010.
2. Notification of the application and intimation of a Case Management Discussion set down for 3<sup>rd</sup> March 2022 was served upon the Respondent by Sheriff Officer on 30<sup>th</sup> January 2022.

## **Case Management Discussion**

3. A Case Management Discussion (“CMD”) took place by telephone conference on 3<sup>rd</sup> March 2022. The Applicants were not in attendance and were represented by Ms Serena Sutherland, Solicitor. The Respondent was not in attendance.
4. The Tribunal considered the terms of Rule 17. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Respondent.
5. Ms Sutherland said the Applicants were seeking an order for possession of the Property. Responding to questions from the Tribunal regarding the discrepancy between the date on the Form AT5 and the alleged start date of 20<sup>th</sup> November 2010, Ms Sutherland said it was the Applicants’ position that the paperwork was completed some time before the tenancy commenced on 20<sup>th</sup> November 2010.
6. Responding to questions from the Tribunal regarding reasonableness, Ms Sutherland said the Applicants live next door to the Property, and they require possession of the Property in order that their daughter can move in to assist with caring responsibilities. The Respondent was informed of the likelihood of this some years ago. Ms Sutherland said the Respondent lives alone at the Property. She understands he is in employment. He does not have any dependents.
7. Responding to questions from the Tribunal, Ms Sutherland confirmed that the section 11 Notice was served by email on the local authority on 14<sup>th</sup> December 2020. She had also spoken to the local authority prior to that date and she is aware that the Respondent is receiving support and assistance from the local authority.
8. The Tribunal adjourned to consider its decision. The Tribunal decided it was reasonable in all the circumstances to grant the order sought.

## **Findings in Fact and Law**

9.
  - (i) Parties entered into a short assured tenancy agreement in respect of the Property that commenced on 20<sup>th</sup> November 2010.
  - (ii) Notice to Quit and Section 33 Notice dated 18<sup>th</sup> May 2021, requiring the Respondent to quit the Property by 20<sup>th</sup> November 2021 were served on the Respondent.
  - (iii) The short assured tenancy has reached its term date.

- (iv) The contractual tenancy terminated on 20<sup>th</sup> November 2021.
- (v) Tacit relocation is not in operation.
- (vi) The Applicants have given the Respondent notice that they require possession of the Property.
- (vii) It is reasonable to grant the order for possession.

### **Reasons for Decision**

10. Section 33 of the Act provides that the Tribunal may make an order for possession if satisfied that the short assured tenancy has reached its finish, tacit relocation is not operating, the landlord has given notice to the tenant that he requires possession, and it is reasonable to make the order. The contractual tenancy has been terminated and tacit relocation is not in operation. The Applicants have given the Respondent notice that they require possession of the Property. The Respondent did not appear at the CMD. In considering reasonableness, the Tribunal took into account the representations made regarding the circumstances of the Applicants and the Respondent. In all the circumstances, the Tribunal considered it reasonable to grant the order.

### **Decision**

11. An order for possession of the Property is granted in favour of the Applicants 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.**

# H Forbes

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Legal Member/Chair

3<sup>rd</sup> March 2022  
Date