



**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/22/0264**

**Property: 114 Melbourne Avenue, East Kilbride, G75 8DP ("Property")**

**Parties:**

**Colin Carr and Eric Kinnear, 9 Glamis Avenue, Newton Mearns, Glasgow G77  
5NZ("Applicant")**

**TC Young Solicitors, 7 West George Street, Glasgow G2 1BA("Applicant's  
Representative")**

**Rachel Mallon and Calum Green, 114 Melbourne Avenue, East Kilbride, G75 8DP  
("Respondent")**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**David Fotheringham (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber)  
("Tribunal") determined that an order for possession of the Property should be  
made.**

**Background**

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Short Assured Tenancy Agreement dated 25 August 2016; AT5 signed by each Respondent dated 25 August 2016; Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("1988 Act") both dated 3 June 2021 addressed to each Respondent; Sheriff Officer's certificate of service evidencing service of the Notice to Quit and section 33 notice on each Respondent on 7 June 2021; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 13 January 2022; and certificate of service by Sheriff Officer evidencing service of the Application on the Respondent on 3 March 2022.

### **Case Management Discussion (“CMD”)**

A CMD took place on 20 April 2022 at 10am by conference call. In attendance for the Applicant was Kirsty Donnelly of the Applicant’s Representative. There was no appearance by the Respondent.

Ms Donnelly told the Tribunal that the respondent had not paid rent since March 2021. The arrears were £7992.21. A payment order had been obtained and a charge had been served but no recovery had been made. Ms Donnelly told the Tribunal that it was unclear whether the Respondent continued to reside in the Property on a permanent basis or used the Property for storage. Ms Donnelly said that the Applicant was suffering financial prejudice as they continued to pay the mortgage on the property as well as insurance but received no income.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement dated 25 August 2016.
2. Each Respondent had signed the form AT5 on 25 August 2016.
3. The tenancy was for the period 25 August 2006 to 26 February 2017 and unless terminated would continue thereafter on a month to month basis.
4. A Notice to Quit dated 3 June 2021 was served on the Respondent on 7 June 2021 stating that the tenancy would terminate on 26 December 2021.
5. A Notice in terms of Section 33 of the 1988 Act dated 3 June 2021 was served on each Respondent on 7 June 2021 stating that possession of the property was required on 26 December 2021.
6. The tenancy reached its *ish* on 26 December 2021 and is not continuing by tacit relocation.
7. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.

### **Reasons for the Decision**

The Tribunal determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act. The Tribunal noted that the tenancy had been properly created as a short assured tenancy. The Tribunal noted that a Section 33 Notice and Notice to Quit had been served on the Respondent giving more than six months' notice

that the Applicant required possession of the Property. The Tribunal noted the level of rent arrears. Having considered all of the circumstances, and in the absence of a submission from the Respondent, the Tribunal determined that it was reasonable to issue an eviction order.

### **Decision**

The Tribunal grants an Order for possession of the Property.

### **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.**

  
**Joan Devine**

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**Legal Member**

**Date: 20 April 2022**