



**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/22/0642**

**Property: Knowes Mill House, Knowes, Dunbar EH42 1XJ ("Property")**

**Parties:**

**George Edmund Baldred Baillie-Hamilton, the Earl of Haddington trading as Lord Binning c/o Galbraith, 59 George Street, Edinburgh EH2 2JG ("Applicant")**

**Turcan Connell, Princes Exchange, 1 Early Grey Street, Edinburgh EH3 9EE ("Applicant's Representative")**

**Elaine Hutchison, Knowes Mill House, Knowes, Dunbar EH42 1XJ ("Respondent")**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Elizabeth Currie (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 22 and 23 January 2016; AT5 dated 12 January 2016; Notice to Quit dated 12 August 2021 addressed to the Respondent; Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("1988 Act") dated 12 August 2021 addressed to the Respondent; recorded delivery slip; emails from the Respondent dated 30 and 31 August 2021 confirming receipt of the Notice to Quit and Section 33 Notice on 13 August 2021; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 dated 24 February 2022 with covering letter dated 4 March 2022 and certificate of service by Sheriff Officer evidencing service of the Application on the Respondents on 13 April 2022.

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

A CMD took place on 27 May 2022 at 10am by conference call. In attendance for the Applicant was Ruari Peoples of the Applicant’s Representative. The Respondent was also in attendance.

Mr Peoples explained that the notice to quit and section 33 notice were served on 13 August 2021. He said that the Applicant intended to sell the Property if an order for possession was granted. Marketing materials had not yet been prepared. Mr Peoples confirmed that the rent is paid up to date. Mr Peoples told the Tribunal that Peter Cochrane had a tenancy of the farm that included the Property. When he gave up that tenancy, the Applicant became in right of the landlord’s part in the tenancy agreement with the Respondent.

The Respondent said that she did not oppose the grant of an order for possession. She said that she had lived in the Property since 2001. She lived there with her husband. She said that she had been in touch with letting agencies and local farmers to try to find alternative accommodation without success. She said that she was in contact with East Lothian Council regarding accommodation and they had told her she needed to go through the process of the Applicant obtaining an order for possession. She said that if an order for possession was granted the Council may house her in bed and breakfast accommodation. She said that she was on local housing lists. The Respondent said that she required to stay in the area as she assisted with care for her granddaughter who has spina bifida, she works for East Lothian Council in Haddington and her husband is a fire fighter working in the locality.

## **Findings in Fact**

The Tribunal made the following findings in fact:

1. Peter Cochran and the Respondent had entered into a tenancy agreement dated 22 and 23 January 2016. The Applicant is now in right of the landlord’s part.
2. The AT5 was given to the Respondent on 12 January 2016.
3. The tenancy was for the period 1 February 2016 to 31 July 2016 and month to month thereafter..
4. A Notice to Quit dated 12 August 2021 was served on the Respondent on 13 August 2021 stating that the tenancy would terminate on 28 February 2022.
5. A Notice in terms of Section 33 of the 1988 Act dated 12 August 2021 was served on the Respondent on 13 August 2021 stating that possession of the property was required on 28 February 2022.

6. The tenancy had reached its end, tacit relocation was not operating, no further contractual tenancy was in existence.
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. Having considered all of the circumstances, the Tribunal determined that it was reasonable to issue an order for possession of the Property but to suspend operation of the order for a period of three months.

### **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 : 27 May 2022**