



**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/22/3216**

**Re: Property at 31 Galt Avenue, Mussleburgh, East Lothian, EH21 8HF (“the Property”)**

**Parties:**

**Mr Colin Ritchie, 14 Delta Avenue, Musselburgh, East Lothian, EH21 8DT (“the Applicant”)**

**Mr Darren Gunn, Mrs Suzanne Gunn, 31 Galt Avenue, Musselburgh, East Lothian, EH21 8HF (“the Respondent”)**

**Tribunal Members:**

**Anne Mathie (Legal Member) and Melanie Booth (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for repossession of the Property be granted.**

**Background**

1. An application was submitted dated 5 September 2022 in terms of Rule 66 of the Chamber Rules for a repossession order on termination of tenancy in terms of section 33 of the Housing (Scotland) Act 1988. Along with the application form, the Applicant purportedly lodged the following documents:
  - A document with further information on the application
  - Copy tenancy agreement
  - AT5 – Suzanne Gunn
  - AT5 – Darren Gunn
  - Section 11 Notice
  - Copy recorded delivery receipt for section 11 Notice

2. The Tribunal wrote to the Applicant on 6 September 2022 asking for copies of the Notice to Quit.
3. The Tribunal wrote again on 7 October 2022 seeking the following information:
  - The application stated it was in terms of Rule 65 but the AT6 lodged stated that the tenancy had reached its natural term and the Applicant was asked whether he wished to amend the application to a Rule 66 application.
  - A copy of the tenancy agreement was required. Without the tenancy agreement it was difficult to establish date and the number of tenants. If there were two tenants, the Tribunal requested sight of the section 33 Notice, notice to quit and proof of service on both tenants.
  - Clarification of the date on section 33 Notice.
  - A copy of the AT5s
  - Submissions relating to the reasonableness of the eviction application.
4. The Applicant replied with the requested information.
5. The application was accepted and assigned to a case management discussion. Intimation of the application and the case management discussion were served on the Respondent by Sheriff Officers on 5 December 2022. The Respondents were advised that they were required to submit any written representations in response to the application by 20 December 2022.
6. No written representations were received.

#### The Case Management Discussion

7. The case management discussion took place by teleconference today. The Applicant attended on his own behalf and Mrs Gunn attended on behalf of herself and her husband.
8. The Applicant advised that he had retired last March. He had turned 66 in December. It had always been his intention to use the sale of the Property to fund his retirement. He had taken early retirement due to ill health. He had a civil service pension scheme. He had no other rental properties he could sell to fund his retirement. He had not yet taken steps to market the Property.
9. Mrs Gunn was attending the case management discussion from the hospital where she was receiving treatment but confirmed she felt able to participate in the case management discussion. She was unable to work due to ill health and was awaiting assessment to go on the transplant list. The Respondents had a 10 year old daughter who would be 11 in May and had additional support needs. Her husband worked. The Respondents had no objection to the eviction order being granted. They were awaiting social

housing but required an eviction order before the local authority would rehouse them.

### Findings in Fact

10. The Tribunal made the following findings in fact:

- The Parties entered into a short assured tenancy agreement from 1 November 2015
- The original term of the tenancy was for six months to 2 May 2016 and would continue monthly thereafter
- The tenancy had reached its end on 2 September 2022
- Valid section 33 Notices and Notices to Quit had been served

### Reasons for Decision

11. The Tribunal took into account the papers and application information before it and the oral submissions of the Applicant and Respondent today. In weighing up the reasonableness of granting the eviction order, the Tribunal took account of the health issues experienced by both parties and their corresponding financial difficulties. The Tribunal gave weight to the fact that the Respondent did not oppose the granting of the eviction order.

### Decision

12. The Tribunal granted the order for repossession 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.**

# A Mathie

3 February 2023

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**Legal Member/Chair**

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**Date**

