



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under 33 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/22/3839**

**Re: Property at 68 West George Street, Coatbridge, ML5 2DD (“the Property”)**

**Parties:**

**Mr James Fennessey, 17 Glen Dochart Drive, Cumbernauld, G68 0FJ (“the Applicant”)**

**Mrs Jennifer Noble, Mr Scott Rhodes, 68 West George Street, Coatbridge, ML5 2DD (“the Respondents”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Frances Wood (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be granted against the respondents**

**Introduction**

1. This is a short assured tenancy eviction application under procedure rule 66 and section 33 of the Housing (Scotland) Act 1988.
2. Intimation of the application and the CMD was made on the respondents by Sheriff Officers on 1 February 2023. The respondents emailed the tribunal on 18 April 2023 to advise that they would not be participating in the proceedings. No opposition or defence was stated.
3. The CMD took place by teleconference on 26 April 2023 at 10.00 am. The applicant joined the hearing and was represented by Ms Claire Mullen of Messrs TC Young Solicitors.


## Findings and Reasons

4. The property is 68 West George Street, Coatbridge ML5 2DD. The applicant is Mr James Fennessey who is the heritable proprietor and registered landlord of the property. The respondents are Mr Scott Rhodes and Mrs Jennifer Noble who are the tenants.
5. The parties entered into a tenancy agreement which commenced on 1 October 2016. An AT5 had been served prior to the tenancy commencing upon the respondents. The tenancy created was a short assured tenancy.
6. The written lease agreement did not stipulate an initial period of let. A period of one year is therefore implied and periods of one year extensions, by tacit relocation are also implied. In the circumstances the tenancy ran initially from 1 October 2016 to 1 October 2017 and has continued by tacit relocation, renewing annually on 1 October each year.
7. On 1 February 2022 the applicant served upon the respondents a notice to quit. In the terms of the said notice to quit, the applicant gave notice to the respondents that they would require to remove from the property on or before 1 October 2022, which was an ish date. Further, on 1 February 2022 the applicant served upon the respondents notice under section 33(1)(d) of the Housing (Scotland) 1988 stating that possession was required of the property as at 1 October 2022. There is evidence that these documents were posted by recorded delivery on 1 February 2022 and evidence from the post office track and trace system that the respondents signed for delivery of the items on 2 February 2022.
8. The short assured tenancy between the parties reached its ish as at 1 October 2022. Tacit relocation is not operating. No further contractual tenancy is in existence. The applicants have complied with the terms of Section 33(1)(d) of the Housing (Scotland) Act 1988.
9. The tribunal proceeded to consider the issue of reasonableness.
10. The respondents circumstances are largely unknown. They are known to have multiple children living with them. Their email of 18 April 2023, sent to the tribunal, states no opposition or defence. It is submitted that the first respondent suffers from mental health problems though no medical evidence is provided to evidence this. It is not said that such difficulties should prevent the eviction being granted.
11. The relationship between the parties has broken down irretrievably. The respondents are in arrears of rent. As at the date of hearing these total £1,410. It is unreasonable to expect the applicant to maintain the property for the respondents in the absence of them making full rental payments. The respondents have failed to comply with allowing access to tradesmen instructed by the landlord to carry out compliance checks to enable him to discharge his statutory landlord obligations.

12. The applicant requires the property to live in. He has multiple physical health conditions. He used to reside in the property as his principal home. He can no longer live where he is currently. This belongs to a friend and as the property is being sold as his friend is leaving the UK. The applicant requires the let property for himself and also his daughter and grandson who live with him. The application is supported by an affidavit of the applicant dated 28 November 2022 which sets out the circumstances which have arisen which require him to seek possession of the property. The tribunal attached weight to this affidavit evidence.
13. The applicant has served a valid notice under section 11 of the Homelessness etc. (Scotland) Act 2003. In the event of an eviction order being granted the local authority is under an obligation to make temporary alternative accommodation available for the respondents and their family.
14. Having assessed the respective circumstances of both parties, the tribunal found that it is reasonable to grant an eviction.
15. In parallel, a second eviction application being an assured application under procedure rule 65 and section 18 of the Housing (Scotland) Act 1988 had been made to the tribunal. Once the tribunal had given its oral decision on the short assured application and that it had been successful this other application referenced FTS/HPC/EV/22/3838 was withdrawn as being unnecessary.
16. The tribunal records however, for the sake of completeness, that it would have found the requirements of the parallel application under Rule 65 to have been met and granted that application in the event that the Rule 66 application had been unsuccessful for any reason. An AT6, being a notice under section 19 of the 1988 Act was relied upon which refers to ground 1 of schedule 5 of the Act. Evidence of service of the notice and a notice to quit was provided. The ground relied upon is that the applicant previously occupied the let property as his only principal home prior to the tenancy commencing. This is supported by the affidavit of the applicant which sets out the circumstances which have arisen which require him to seek possession of the property. This establishes ground 1 of schedule 5 to the 1988 Act. The granting of the eviction would otherwise be reasonable for all of the reasons otherwise set out.

## **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.**



**Legal Member/Chair**

**26 April 2023**

**Date**