



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/EV/22/3902**

**Re: Property at 5 Birkscairn Place, Irvine, KA11 1ED (“the Property”)**

**Parties:**

**Mr Kenneth Rogers, 215 Hurst Road, Sidcup, Kent, DA15 9AL (“the Applicant”)**

**Miss Claire Crawley, 5 Birkscairn Place, Irvine, KA11 1ED (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 5 Birkscairn Place, Irvine, be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with her goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.**

**Background**

1. By application dated 24 October 2022, the Applicant’s agent applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession of the property at 5 Birkscairn Place, Irvine, KA11 1ED (“the Property”) in terms of Rule 66 the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Short Assured Tenancy between the parties dated 21 November 2017, an AT5 dated 21 November 2017, a Notice to Quit and a Section 33 Notice both dated 4 August 2022 together with a Sheriff Officers' Execution of Service dated 9 August 2022, and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2002 with email to North Ayrshire Council dated 24 October 2022.
3. On 2 February 2023 the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 8 March 2023, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 13 April 2023. The Respondent required to lodge written submissions by 29 March 2023. This paperwork was served on the Respondents by Stuart Sinclair, Sheriff Officer, Glasgow on 9 March 2023 and the Execution of Services were received by the Tribunal administration.

### **Case Management Discussion**

5. The Tribunal proceeded with the CMD on 13 April 2023 by way of teleconference. The Applicant was represented by Alan Hall from Homesure. The Respondent was represented by Alister Meek from CHAP.
6. The Tribunal had before it the Short Assured Tenancy between the parties dated 21 November 2017, the AT5 dated 21 November 2017, the Notice to Quit and a Section 33 Notice both dated 4 August 2022 together with a Sheriff Officers' Execution of Service dated 9 August 2022 and the Notice under Section 11 of the Homelessness etc. (Scotland) Act 2002 with email to North Ayrshire Council dated 24 October 2022. The Tribunal noted the terms of these documents.
7. Mr Hall moved the Tribunal to grant an order for eviction. He clearly explained that the Applicant's mortgage with his wife over the Property was coming to an end and that they had no other option but to commence eviction action and then market it for sale through Homesure. On being questioned by the Tribunal he confirmed the Applicant and his wife were in their late 70s. They had another property on the market and another case going through the Tribunal.
8. Mr Meek for the Respondent explained that the Respondent did not oppose the application. However, he moved that the order be postponed for two months to allow the local authority time to find alternative accommodation for the Respondent and her two dependent children. He explained that the Respondent had applied for housing with the local council. The Respondent had some mental health issues which were not debilitating.

9. In response, Mr Hall advised that his client was always willing to work with the Respondent and on that basis would have no objection in the event that the Order was granted to it being postponed for two months to allow the Respondent time to find alternative accommodation.

### **Reasons for Decision**

10. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered oral submissions made by both Mr Hall and Mr Meek. The Tribunal were grateful to parties for their submissions. The Tribunal concluded that the Applicant was entitled to repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its end (termination date); the Notice to Quit brought the contractual Short Assured Tenancy to an end; and that the Applicant had given the Respondent notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the property was required. This position was accepted by the Respondent who did not oppose the application.
11. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant's need to sell the Property was due to his mortgage coming to an end and that due to his age he had no option but to sell the Property. Further the Tribunal considered the application was not opposed by the Respondent who was engaging with the local authority to find alternative accommodation. The balance of reasonableness in this case accordingly weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.
12. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 it was reasonable to grant an eviction order.

### **Decision**

13. The Tribunal granted an order for repossession. On the Respondent's unopposed motion, the order will be postponed until 13 June 2023. The decision of the Tribunal was unanimous.

### **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.**

**Shirley Evans**

**13 April 2023**

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**Legal Chair**

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**Date**