



**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/23/0149**

**Re: Property at 49 Osprey Road, Paisley, PA3 2QG (“the Property”)**

**Parties:**

**Mr Alan Stewart, 7 Claremont Grove, Aberdeen, AB10 6RF (“the Applicant”)**

**Ms Audrey MacKinnon, 49 Osprey Road, Paisley, PA3 2QG (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision**

**1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the eviction of the Respondent from the property be made on the basis of the expiry of the short assured tenancy agreement in terms of s33 of the Housing (Scotland) Act 1988 and on the basis that it is reasonable in all of the circumstances to grant the eviction.**

2. This was a case management discussion (‘CMD’) in connection with an Application in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’ and s 33 of the Housing (Scotland) Act 1988, ‘the Act’, for an eviction order on the expiry of a short assured tenancy agreement.

3. The Applicant was represented by Ms Jennifer Cochrane solicitor. The Respondent attended.

4. The tribunal had before it the following copy documents:

(1) Application dated 16 January 2023.

(2) Tenancy agreement dated 27 June 2016 for the initial period of 30 June 2016 until 30 December 2016.

- (3) Notice to quit dated 15 July 2022.
- (4) S33 notice dated 15 July 2022.
- (5) S11 notice on local authority.
- (6) Land certificate.
- (7) Landlord registration details.
- (8) Rent statement.
- (9) Email from Applicant to Respondent dated 16 June 2016.
- (10) Sheriff officer's execution of service of the s33 notice and notice to quit dated 30 March 2022.
- (11) Applicant's submissions dated 20 April 2023.
- (12) Respondent's submissions dated 17 and 24 April 2023.

## **Preliminary matters**

5. The Tribunal required to be satisfied that a short assured tenancy agreement has been constituted. The Applicant had lodged a copy of an email sent to the Respondent on 16 June 2016 which stated that the AT5 and tenancy agreement were being sent to her on the post for signature. The Tribunal had issued a direction to the Applicant on 16 March 2023 asking for a copy of the signed AT5 or alternatively evidence regarding how the AT5 was given to the tenant and the contents of the AT5. Ms Cochrane was unable to provide any other evidence regarding the AT5. Her client did not have a copy. Ms MacKinnon remembered receiving the tenancy agreement in the post in June 2016 which she signed and sent back to the Applicant. She did not remember receiving a second document but equally she did not dispute that she had received the AT5. Ms Cochrane submitted that the tenancy agreement made reference to the AT5 being served and she had produced a copy of an email from the Applicant from 16 June 2016 telling the Respondent that he was sending her the AT5 and tenancy agreement. She also submitted that the Respondent was not disputing the AT5 was served. She submitted that a short assured tenancy agreement had therefore being constituted.
6. It was not clear to the Tribunal from the terms of the correspondence received from the Respondent whether she was opposed to the eviction order being granted or not. Ms MacKinnon told the Tribunal she was in favour of the eviction being granted as this would assist her with her tenancy applications to the Renfrewshire Council and two housing associations. She had taken steps to reduce the rent arrears that accrued during Covid and she plans to continue to do so. The arrears currently stand at around one month's rent. She no longer wishes to reside in the property and would prefer to be rehoused.

## Discussion

7. Ms Cochrane invited the Tribunal to grant the eviction on the expiry of the short assured tenancy and that it was reasonable in all of the circumstances to do so. She submitted that the Application was never about the arrears of rent. It was made as the Applicant wishes to sell the property so that he can purchase a larger property in Aberdeen for his growing family. The rent arrears have been reduced to £730, just over the monthly rental payment of £695. In the circumstances Ms Cochrane was prepared to withdraw the conjoined Application for rent arrears given the Respondent has reduced the arrears and has stated her intention to continue to do so. The Applicant is aware he can make a new Application for rent arrears if the Respondent does not pay off the arrears.
8. Ms MacKinnon has two children age 16 and 10. They both attend school in Paisley. She has been in discussion with Renfrewshire Council and a couple of housing associations and she is hopeful that she will be rehoused in Paisley as a matter of priority once the eviction is granted.

## Findings in fact

- The Applicant is the owner and registered landlord of the property.
- The parties entered into a short assured tenancy for let of the property on 27 June 2016 for the initial period of 30 June 2016 until 30 December 2016 and month to month thereafter.
- The Applicant served a valid notice to quit and s33 notice on 30 March 2022.
- The tenancy has reached it's ish and tacit relocation is not operating.
- The Applicant wishes to sell the property.
- The Respondent wishes to be rehoused.

## Reasons

9. The Tribunal was satisfied on the balance of probability that a short assured tenancy has been constituted. The Applicant sent the AT5 to the Respondent on 16 June 2016 and the tenancy agreement she signed acknowledges that the AT5 was served in advance. The Respondent did not dispute that the AT5 was served.
10. The Tribunal was satisfied that that the notice to quit ties in with the ish date and that the short assured tenancy has been brought to an end. The tribunal was satisfied that it is reasonable in all of the circumstances for

the eviction to be granted given the Applicant wishes to sell and the Respondent wishes to be rehoused. The eviction order will help her expedite matters.

### **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.**

L Ward

5 May 2023

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**Legal Member/Chair**

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**Date**