

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/18/3243**

**Re: Property at 10 U/L Jeffrey Street, Kilmarnock, Ayrshire, KA1 4EB (“the  
Property”)**

**Parties:**

**Mr Joel Ferguson, 26 Church Road, Crossgar, County Down, BT30 9HR,  
Ireland (“the Applicant”)**

**Mr Jason Lee, 10 U/L Jeffrey Street, Kilmarnock, Ayrshire, KA1 4EB (“the  
Respondent”)**

**Tribunal Member:**

**Martin McAllister (Legal Member)**

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

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

**Background**

This is a case management discussion to consider an application for recovery of possession of the Property under Section 33 of The Housing (Scotland ) Act 1988 (the 1988 Act).

Proceedings were delayed until 2.05 pm but neither the Respondent nor a representative on his behalf appeared.

Mr Robert Gallon, solicitor, appeared on behalf of the Applicant.

## **Preliminary Matters**

I noted that the date and time of the case management discussion had been intimated to the Respondent by sheriff officer.

I explained the purpose of a case management discussion and Mr Gallen indicated that his position was that a Hearing would not be necessary. He said that the notices had been properly served on the Respondent, that the required period of notice had been given to him and that the appropriate notice had been served on the local authority. He said that part of the rent had previously been paid by housing benefit and that this had stopped in April 2018 and that, had there been issues with payment of benefits to the Respondent he would have expected him to have advised the Applicant of this and to have taken steps to resolve matters. Mr Gallon said that he had no knowledge of their being any issues with benefits.

## **Documents before the Tribunal**

1. Short Assured Tenancy Agreement dated 23<sup>rd</sup> December 2016.
2. Notice to Quit dated 22<sup>nd</sup> October 2018.
3. Section 33 Notice dated 22<sup>nd</sup> October 2018.
4. Notice under Section 11 of the Homelessness etc (Scotland) Act 2011.
5. Sheriff Officer's certificate of service dated 23<sup>rd</sup> August 2018.

## **Findings in Fact**

1. The Respondent is a party to a short assured tenancy of the Property which commenced on 23<sup>rd</sup> December 2016 and had an end date (ish) of 24<sup>th</sup> June 2016.
2. The tenancy had continued by tacit relocation until 24<sup>th</sup> October 2018 when it was brought to an end by virtue of service of a Notice to Quit and a Notice under Section 33 of the 1988 Act which were both dated 22<sup>nd</sup> August 2018 and which had been served by sheriff officer on 23<sup>rd</sup> August 2018.

## **Reasons for Decision**

I first of all had to consider whether or not it was necessary for there to be a hearing to determine the application in terms of regulation 18 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. In terms of the regulation I may make a decision without a hearing if I can make sufficient findings to determine the case having regard to such facts as are not disputed by the parties and to do so will not be contrary to the interests of the parties. In this case the Respondent had made no representations and, in the circumstances, I considered that the Applicant was entitled to a determination of the case without further delay.

I considered the terms of the documentation submitted with the application:

The tenancy agreement showed the end date to be 24<sup>th</sup> June 2017 but stated that, if not brought to an end on that date would continue on a monthly basis.

The Notice under Section 33 of the Act gave the Respondent two months' notice which is the required period of notice required under Section 33 (2) of the 1988 Act.

Appropriate notice had been served on the local authority in terms of Section 11 of The Homelessness etc (Scotland) Act 2003.

Section 33 (1) of the 1988 Act states that I must make an order for possession if I am satisfied that-

- (a) the short assured tenancy has reached its end;
- (b) that tacit relocation is not operating;
- (c) that no further contractual tenancy ( whether a short assured tenancy or not) is for the time being in existence; and
- (d) that the landlord has given to the tenant notice stating that he requires possession of the house.

I also require to be satisfied that the period of notice of two months has been given.

On the basis of the documentation before me I am satisfied that all the requirements of the 1988 Act are met and that it is appropriate to grant the Order sought by the Applicant.

### **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.**

**Mr Martin McAllister**

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Legal Member/Chair

29/1/18  
\_\_\_\_\_  
Date