



**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/24/1827

Re: Property at 39 Talisker Avenue, Kilmarnock, KA3 1QZ (“the Property”)

Parties:

Mr Graham McHarrie, 460 Shields Road, Motherwell, ML1 2NN (“the Applicant”)

**Ms Fiona MacTavish, 39 Talisker Avenue, Kilmarnock, KA3 1QZ (“the
Respondent”)**

Tribunal Members:

Gillian Buchanan (Legal Member) and Tony Cain (Ordinary Member)

Decision

At the Case Management Discussion (“CMD”), which took place by telephone conference on 16 October 2024, the Applicant was not in attendance but was represented by Ms Angela Kennedy. The Respondent was also present.

Prior to the CMD the Tribunal had received the following written representations from the parties:-

1. Email from the Respondent dated 4 October 2024;
2. Email from the Applicant dated 9 October 2024; and
3. Email from the Respondent dated 15 October 2024.

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that:-**

Background

The Tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondent in terms of a Short Assured Tenancy (“the SAT”) that commenced on 18 October 2016.
- ii. The initial term of the SAT was to 18 October 2017 and in terms thereof the SAT thereafter continued on a month to month basis.

- iii. On 16 February 2024, the Applicant served on the Respondent by Sheriff Officers a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") dated 8 February 2024 requiring the Respondent remove from the Property by 18 April 2024.
- iv. The Applicant has served on East Ayrshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

At the CMD the Respondent made the following submissions:-

- i. That she was not opposing an eviction order being granted as she no longer wishes to stay in the Property.
- ii. She has the keys for alternative accommodation allocated to her by a housing association. However, that property is not yet ready to live in.
- iii. She said she is desperate to move out the Property.
- iv. The outstanding works to the property to which she is moving are estimated to be complete by 1 November 2024. These works have not started yet.
- v. Once the works are complete they will require inspected and signed off. She envisages that will take no more than a week thereafter.
- vi. She would like to start moving her belongings into the new property as work is carried out on a room by room basis.
- vii. If the new property is not ready by the time the eviction order is enforced she may ask the housing association to find her alternative accommodation on a temporary basis.

At the CMD Ms Kennedy for the Applicant made the following submissions:-

- i. The Applicant is paying for the Respondent to continue to live in the Property.
- ii. The Respondent has paid no rent since July 2024.
- iii. The Applicant requires an eviction order.

The Tribunal adjourned briefly.

Reasons for Decision

The Respondent in her written submissions and orally at the CMD confirmed she does not oppose the grant of an eviction order. She has alternative accommodation and awaits outstanding works to be completed to allow her to move in. She is confident these will be completed by 1 November or shortly thereafter.

The Tribunal expressed concern to Ms Kennedy at the tone and content of text messages sent by the Applicant to the Respondent which were tantamount to unlawful harassment of the Respondent to secure her removal. The Applicant requires to follow the correct legal process to recover possession of the Property.

Decision

The Tribunal grants an eviction order against the Respondent in favour of 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.

Gillian Buchanan

Legal Member/Chair

16 October 2024

Date