



**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/24/2928

Property: 4 Blaven Court, Forres, Morayshire IV36 1EH ("Property")

Parties:

**Andrew Leatherbarrow, Nuholme, Drigg Road, Seascale, Cumbria CA20 1NS
("Applicant")**

Zoe Coull, 4 Blaven Court, Forres, Morayshire IV36 1EH ("Respondent")

Tribunal Members:

Joan Devine (Legal Member)

Eileen Shand (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber)
("Tribunal") determined that an order for possession of the Property should be
made.**

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Short Assured Tenancy Agreement which commenced on 27 April 2007; AT5 dated 27 April 2007; Notice to Quit dated 17 April 2024 and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("1988 Act") dated 17 April 2024, both addressed to the Respondent; royal mail notifications that attempts to deliver the item tracked had been unsuccessful; copy emails to the Respondent attaching the Notice to Quit and Section 33 Notice dated 19 April 2024; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 27 June 2024 and sheriff officer execution of service confirming service of the application on the Respondent on 17 February 2025.

Case Management Discussion (“CMD”)

A CMD took place before the Tribunal by conference call on 27 March 2025. The Applicant was in attendance. There was no appearance by or on behalf of the Respondent.

The Tribunal asked the Applicant if there had been any recent contact from the Respondent. He said there had not. He said the last communication was in December 2024. He said the Respondent had said that she regarded herself as squatter and she would not provide access to the Property.. He said the rent was paid in part in September 2024 and not at all in October 2024. He said that he contacted the department of work and pensions who started to pay part of the rent although that had stopped in February 2025. He said the arrears are now between £2000 and £3000. The Applicant said the Respondent had lived in the Property with three children but they were all now adults so may no longer live in the Property. He said the Property is a three bedroom semi-detached house with garage and garden front and back. As regards service of the notice to quit and section 33 notice, the Applicant said he had communicated with the Respondent in the past by email and she seemed to be content to accept email. The Applicant said that he intends to sell the Property if an order for possession is granted.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a short assured tenancy agreement which commenced on 27 April 2007.
2. The tenancy was for the period 27 April 2007 to 27 October 2007 and month to month thereafter.
3. A Notice to Quit dated 17 April 2024 was served on the Respondent on stating that the tenancy would terminate on 27 June 2024.
4. A Notice in terms of Section 33 of the 1988 Act dated 17 April 2024 was served on the Respondent on stating that possession of the property was required on 27 June 2024.
5. The tenancy reached its *ish* on 27 June 2024 and is not continuing by tacit relocation.
6. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.

Reasons for the Decision

The Tribunal consider the validity of the service of the notices and noted that at page 498 of Adrain Stalker's book on evictions he stated that there are no statutory rules that prescribe the mode of service of a notice to quit and at page 499 Stalker indicates ordinary post would be acceptable. As regards the section 33 notice, the Coronavirus (Recovery and Reform) (Scotland) Act 2022 schedule 1 paragraph 2(1) provides that a document of the type mentioned in paragraph 3(1) may be given to a person electronically. Paragraph 2(2)(a) provides that the electronic transmission must be effected in a way that the recipient has indicated to the sender that the recipient is willing to receive the document. Paragraph 2(2)(b) provides that the recipient's indication of willingness to receive a document in a particular way may be generally applicable to documents of that kind, expressed specifically to the sender or inferred from the recipient having previously been willing to receive documents from the sender in that way and not having indicated unwillingness to do so again. The Applicant had told the Tribunal that the Respondent had been content to communicate by email.

The Tribunal determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act. The Tribunal noted that the tenancy had been properly created as a short assured tenancy and that a Section 33 Notice and Notice to Quit had been served on the Respondent giving two months' notice that the Applicant required possession of the Property.

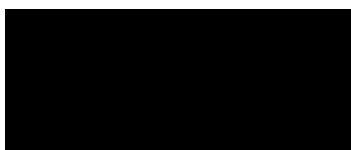
Having considered all of the circumstances, and in the absence of a submission from the Respondent, the Tribunal determined that it was reasonable to grant and order for possession of the Property.

Decision

The Tribunal grants an Order for possession of the Property.

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

Date : 27 March 2025