



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 33(1) of the Housing
(Scotland) Act 1988 (“the Act”)**

Chamber Ref: FTS/HPC/EV/19/0631

**Re: Property at 26 Robertson Close, Kirkmuirhill, Blackwood, South
Lanarkshire, ML11 9YY (“the Property”)**

Parties:

**Mr James Mackie and Mrs Constance Mackie, t/a Arosay Properties, 67 Clyde
Tower, Mount Cameron Drive South, St Leonards, East Kilbride, G74 2HQ (“the
Applicants”)**

**Mr David Sharp, residing at 26 Robertson Close, Kirkmuirhill, Blackwood,
South Lanarkshire, ML11 9YY (“the Respondent”)**

Tribunal Members:

Karen Moore (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an Order for Possession be granted.**

Background

1. By application received between 26 February 2019 and 11 March 2019 (“the Application”), the Applicants made an application to the Tribunal for a possession order in terms of Section 33 of the Act and in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). A copy of the tenancy agreement between the parties, a copy of a Notice to Quit, copy notice in terms of Section 33(d) of the Act and a copy of notice in terms of Section 19A of the Act to South Lanarkshire Council all with proof of service were lodged as part of the Application.
2. On 18 March 2019, a legal member of the Tribunal with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 12 June 2019 at 14.00 The Glasgow

Tribunals Centre, Room 111, 20 York Street, Glasgow, G2 8GT. The CMD was intimated to both parties.

3. The Respondent contacted the Chamber on 10 June 2019 and advised that he was unable to travel to Glasgow to attend the CMD. Accordingly, the Chamber arranged for him to participate by conference call.

Case Management Discussion

4. The CMD took place on 12 June 2019 at 14.00 at the said Glasgow Tribunals Centre. The Applicants were both present. The Respondent participated by conference call.
5. I explained to the parties that the Application is for possession of the Property on two grounds: one being termination of the tenancy and the other being breach of tenancy as arrears of rent of over eight months are due and owing. I explained that the Act states that if the tenancy is brought to an end properly and in accordance with the common law and the Act, the Tribunal must grant an Order, regardless of whether there is a breach of the tenancy agreement.
6. The Applicants confirmed that the Order for possession was sought.
7. Mr. Sharp advised me that he over four years and that the rent arrears were recent. He advised me that he is now in receipt of Universal Credit and that rent would now be paid direct to the Applicants together with an amount towards the rent arrears, which he admitted. Mr. Sharp accepted that the statutory and common law notices being, Notice to Quit, notice in terms of Section 33(d) of the Act and notice in terms of Section 19A of the Act had been received by him. Mr. Sharp explained to me that he had no alternative accommodation and was now making payment direct to the Applicants by way of Universal Credit. I explained to the Parties that the only challenge could be in respect of an error in the procedure which terminated the tenancy and Mr. Sharp fairly accepted that the he had no challenge in this respect.
8. I asked the Applicants to confirm if they still sought the Order, which they did so confirm. Mr. Mackie of the Applicants advised me that the level of payment towards the arrears of just over £31.00 was such that it would take over four years to clear and that the Respondent had failed to adhere to an earlier payment plan, which the Respondent accepted.

Findings in Fact

9. From the Application and the CMD, I found that a tenancy agreement had existed between the parties until terminated by the Applicant by virtue of a Notice to Quit served on the Respondents by the Applicants and that tacit relocation is not operating. I found that notice in terms of Section 33(d) of the Act had been served on the Respondent and that notice in terms of Section 19A of the Act had been properly intimated to the relevant local authority. Accordingly, I found that the statutory and common law provisions required to terminate the tenancy between the Parties had been satisfied.

10. From the Application and the CMD, I found that at least three months' rent arrears at the date of service of the notice in terms of Section 19 Of the Act and at the date of the CMD is due and owing by the Respondent.

Decision and Reasons for Decision

11. Having found that the tenancy had been terminated and the correct procedure followed, I had regard to Section 33(1) of the Act which states that "the First-tier Tribunal shall make an order" and to Rule 17(4) of the Rules which state that the Tribunal "may do anything at a case management discussion which it may do at a hearing, including make a decision" and, accordingly, I determined to grant an Order for possession.

12. Having so determined, there is no need for me to consider a determination in terms of the breach of tenancy. However, had I been required to do so, I would have determined that this ground had been satisfied and would have granted on the Order on that basis.

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.

Karen Moore

Legal Member/Chair

12 June 2019

Date