

**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/19/1034**

**Re: Property at 92 Lower Bathville, Armadale, EH48 2JS (“the Property”)**

**Parties:**

**Ms Donna Murray, 53 Dalzell Place, Armadale, West Lothian, EH48 2QB (“the Applicant”)**

**Mr Kenneth Rodger, Ms Gillian Brand, 92 Lower Bathville, Armadale, EH48 2JS (“the Respondents”)**

**Tribunal Members:**

**Alastair Houston (Legal Member)**

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

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

**1. Background**

1.1 This is an application under Rule 66 of the The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) whereby the Applicant was seeking an order for possession of a property let on a Short Assured Tenancy agreement that had been terminated.

1.2 The application was accompanied by copies of a written tenancy agreement, a notice to quit, a notice in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”), proof of postage of the notices, a Form AT5 and a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003. Following a request for further information, a copy of a more recent tenancy agreement and further Form AT5 were provided by the Applicant.

1.3 The Respondents had lodged a written response to the application dated 28 May 2019. The Respondents had included a copy of a repairing standard enforcement order and written decision issued by the Tribunal in respect of the Property.

## **2. The Case Management Discussion**

2.1 The Case Management Discussion took place on 13 June 2019. The Applicant was represented by Mr Steven Rollo of Let Link Ltd. The Respondents were neither present nor represented.

2.2 The Legal Member considered that the notice of the Case Management Discussion had been given to the Respondents. Accordingly, the Case Management Discussion proceeded in their absence as permitted by Rule 29 of the Rules.

2.3 Mr Rollo advised that the application was insisted upon. The Respondents remained within the property. The Short Assured Tenancy had been brought to an end.

## **3. Reasons For Decision**

3.1 The Legal Member considered the submissions of Mr Rollo together with all papers accompanying the application, including the written representations of the Respondents.

3.2 In the present case, the most recent written agreement between the parties contained a specified period of let commencing on 1 October 2015 and ending on 2 April 2016. Thereafter, the tenancy continued on a monthly basis, renewing on the 2<sup>nd</sup> day of each calendar month. The Applicant has served a valid notice to quit terminating the contractual tenancy as of 2 April 2019. Notice in terms of Section 33 of the 1988 Act had also been given to the Respondents advising the Applicant required possession of the Property on that date. Accordingly, the contractual tenancy had reached its end, tacit relocation was not operating and the correct period of notice had been given to the Respondents.

3.3 In terms of Section 33(1) of the 1988 Act, the Tribunal is required to make an order for possession should the requirements of Section 33 be satisfied. The Legal Member considered that they had been met in the present case. Whilst the Respondents had referred to their complaints regarding outstanding repairs to the Property being the catalyst for service of the notice to quit and the subsequent repairing standard enforcement order issued, this is not relevant for determining whether the requirements of Section 33 have been met. Accordingly, an order for possession required to be made.

## 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 A Houston

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Legal Member/Chair

13/6/19  
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Date