



**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/18/1356

Re: Property at 25 George Court, Irvine, KA12 0PJ (“the Property”)

Parties:

**Mr Raymond Phillip Cuckow, Ms Mary Crane, Greenwood, 12 Douglas Grove,
Lower Bourne, GU10 3HP; Greenwood, 12 Douglas Grove, Farnham, GU10 3HP
 (“the Applicants”)**

**Mr Stephen Hamill, Ms Jodie Hamill, 25 George Court, Irvine, KA12 0PJ; 25
George Court, Irvine, KA12 0PJ (“the Respondents”)**

Tribunal Members:

Alastair Houston (Legal Member)

Decision in absence of the Respondents

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application for an order for possession should
be refused.**

Background

This is an application for order for possession upon termination of a short assured tenancy. The application was accompanied by a copy of the written tenancy agreement between the parties, a Notice to Quit and a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 (“the Section 33 Notice”). Both of these notices were dated 28 December 2017.

The Case Management Discussion

The Case Management Discussion took place on 30 July 2018. The present application was conjoined with application reference FTS/HPC/CV/18/1061. The applicants were represented by Miss McFarlane of Mair Mathieson Solicitors. The

respondents were neither present nor represented. No written representations or other communication had been received from the respondents.

The tribunal considered that, in light of the Sheriff Officers' certificates of intimation of the date of the Case Management Discussion, rule 24(1) of the 2017 Rules regarding giving notice of the Case Management Discussion had been complied with and it was appropriate to proceed in the absence of the respondents.

Miss McFarlane confirmed that application was insisted upon. She further confirmed that the Notice to Quit and the Section 33 Notice accompanying the application were the notices relied upon. She advised the notices had been prepared by letting agents prior to her instruction in respect of the application.

The tribunal noted that the Section 33 Notice required the respondents to remove from the tenancy subjects on 28 February 2018. The tribunal also noted that the Notice to Quit did not specify an *ish* date on which the tenancy agreement was to be terminated. Furthermore, no proof of service accompanied the notices. Upon raising this with Miss McFarlane, she advised that, to her knowledge, the notices were hand delivered to the respondents by an employee of the aforementioned letting agents.

Miss McFarlane conceded that the Notice to Quit did not specify an *ish* date on which the tenancy agreement was to be terminated. She referred to a letter dated 28 December 2017 which appeared to have accompanied the Notice to Quit and the Section 33 Notice, a letter dated 28 December 2017 headed "RE: Dilapidation Inspection at 25 George Court, Irvine, KA12 0PJ" and a letter dated 29 January 2018 also headed "RE: Dilapidation Inspection at 25 George Court, Irvine, KA12 0PJ" as making references to the date of termination of the tenancy.

Reasons for Decision

Section 33 of the Housing (Scotland) Act 1988 requires the tribunal to grant an order for possession of a property let on a short assured tenancy where the tenancy has reached its *ish*; tacit relocation is not operating; no further contractual tenancy for the time being is in existence and the landlord has given notice to tenant that they require possession of the house.

In the present application, the tenancy agreement between the parties cannot be said to have reached its *ish*. It is an essential feature of a Notice to Quit that it contains a valid *ish* date. The tribunal did not consider that a date on which termination was to occur could be imported from another document. Furthermore, and in any case, any Notice to Quit must be served by either recorded delivery or by sheriff officers to comply with the requirements of the Sheriff Courts (Scotland) Act 1907. The notice to quit had, therefore, not been validly served on the respondents.

Accordingly, the requirements of Section 33 of the Housing (Scotland) Act 1988 had not been satisfied and the tribunal could not make an order for possession.

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.

Alastair Houston

Legal Member/Chair

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Date

11 SEPTEMBER 2018