

**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/19/1893**

**Re: Property at 49 Masondieu Road, Elgin, IV30 1RB (“the Property”)**

**Parties:**

**Mr George Miller, Mrs Elizabeth Miller, Craighdu, 17 Glenlossie Road, Birnie,  
Elgin, IV30 8GY (“the Applicant”)**

**Grampian Property Care, 52 High Street, Elgin, IV30 1BU (“the Applicant’s  
Agent”)**

**Mr Colin Ritchie, 49 Masondieu Road, Elgin, IV30 1RB (“the Respondent”)**

**Tribunal Members:**

**Ruth O’Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined to make an order for repossession against the  
Respondent**

- 1 By application dated 14 June 2019 the Applicant sought an order for repossession of the property against the Respondent. In support of the application the Applicant submitted the following documentation:-
  - (a) Short Assured Tenancy Agreement between the parties dated 21 September 2013;
  - (b) Form AT5 dated 21 September 2013;
  - (c) Copy Notices to Quit dated 23 February 2018 and 1<sup>st</sup> April 2019;

- (d) Copy Notices under section 33(1)(d) of the 1988 Act dated 23<sup>rd</sup> February 2018 and 1<sup>st</sup> April 2019;
  - (e) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Moray Council; and
  - (f) Correspondence between the Applicant's Agent and Housing Options Officer at Moray Council.
- 2 By Notice of Acceptance of Application dated 17 July 2019 the Legal Member of the First-tier Tribunal with delegated powers of the Chamber President agreed that there were no grounds on which to reject the application. A Case Management Discussion was therefore scheduled for 2 September 2019.
- 3 A copy of the application together with notification of the Case Management Discussion was served upon the Respondent by Sheriff Officers on 29<sup>th</sup> July 2019.

### **Case Management Discussion**

- 4 The Case Management Discussion took place at Elgin Library on 2 September 2019. The Applicants were present and accompanied by Gordon Alexander from the Applicant's Agent. The Respondent was present.
- 5 The Legal Member explained the procedure and that the Tribunal could make a decision at the Case Management Discussion if the substantive facts were agreed between the parties. The Legal Member then asked the Respondent what his position was regarding the application.
- 6 The Respondent advised that he wanted the Applicant's to have the house back. He could not fault their conduct, nor the conduct of Mr Alexander and his staff. He had found the whole situation really stressful. He wanted to apologise to the Applicants for the conduct of his tenancy.
- 7 The Legal Member explained that the procedure relied upon by the Applicant was essentially administrative and that if the Tribunal was satisfied that the required notices had been served she would be obliged to make an order for repossession. The Respondent accepted that and stated that he did not dispute anything in the application.

### **Findings in Fact and Law**

- 8 The parties entered into a Tenancy Agreement in respect of the property dated 21<sup>st</sup> September 2013.

- 9 The tenancy was a Short Assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 10 A Notice to Quit was served upon the Respondent on 1<sup>st</sup> April 2019. The said Notice terminated the tenancy as at 1<sup>st</sup> June 2019.
- 11 The tenancy has reached its end as at 1st June 2019. Tacit relocation is not operating.
- 12 The Respondent has been served with notice intimating that the Applicants require possession of the property as at 1<sup>st</sup> June 2019.

### **Reasons for Decision**

- 13 The Tribunal was satisfied that it was able to make a decision at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Respondent had not sought to dispute any of the facts of the case and had intimated at the Case Management Discussion that he accepted the terms of the application.
- 14 The Applicants had sought an order under section 33 of the Housing (Scotland) Act 1988. Section 33 permits a landlord to seek an order for possession of a Short Assured Tenancy as defined by section 32 of the said Act where the tenancy has reached its end, tacit relocation is not operating and the landlord has given notice that he requires possession of the house.
- 15 The Tribunal accepted based on its findings in fact that the tenancy between the parties was a Short Assured Tenancy and the Applicant could therefore rely on the provisions of section 33 to recover possession of the property. The Tribunal was further satisfied that a valid Notice to Quit had been served upon the Respondent which had terminated the tenancy at an end date, namely 1<sup>st</sup> June 2019. Tacit relocation was no longer operating. The Applicant had also served the Respondent with notice under section 33(1)(d) of the Act advising that he required possession of the house as at that date.
- 16 Accordingly the Tribunal accepted that the provisions of section 33 had been met. It was therefore obliged to make an order for repossession.

## 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.

R. O'Hare

2/9/19



Legal Member/Chair

Date