

Housing and Property Chamber
First-tier Tribunal for Scotland



**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 (hereinafter referred to as “the 1988 Act”) for Recovery of Possession
of a short assured tenancy.**

Chamber Ref: FTS/HPC/EV/19/2328

**Re: Property at Flat 0/1, 12 Torrisdale Street, Strathbungo, Glasgow, G42 8PZ
 (“the Property”)**

Parties:

**Miss Tracey Murphy, Flat 1/2, 75a Stonelaw Road, Rutherglen, Glasgow G73
3TN (“the Applicant”)**

**Mr John Allan, Flat 0/1, 12 Torrisdale Street, Strathbungo, Glasgow G42 8PZ
 (“the Respondents”)**

Tribunal Members:

Karen Kirk (Legal Member)

**This Hearing was a Case Management Discussion fixed in terms of Rule 17 of
the Procedure Rules and concerned an Application for Recovery of
Possession on termination of a short assured tenancy under Section 33 of the
Housing (Scotland) Act 1988. The purpose of the Hearing being to explore
how the parties dispute may be efficiently resolved. The purpose of the
hearing was explained to parties. Parties understood a final decision on the
Application could also be made.**

Attendance and Representation

**The Applicant was represented by Nicola Caldwell, TC Young Solicitors, 7
West George Street, Glasgow G2 1BA**

**Mr John Allan, Flat 0/1, 12 Torrisdale Street, Strathbungo, Glasgow G42 8PZ,
attended the Tribunal personally with representation.**

Karen Kirk

The respondent was represented by Fred Simpson, Campbell McCartney solicitors.

Matters Arising

The Respondents representative at the outset sought a continuation of 3 weeks to allow the Respondent an opportunity to voluntarily vacate the property. This was opposed by the Applicants representative. The Tribunal offered parties an adjournment to discuss whether any agreement could be reached and for the Applicants representative to obtain instructions on the proposal. Following the Adjournment, it was confirmed that there was no agreement and the Applicant sought an Order for possession of the property today.

The Respondents representative intimated a couple of issues to the Tribunal, he suggested that a short assured tenancy cannot continue for more than 5 years and that the terms of the AT5 precluded a month to month SAT after the initial term. In response, the Applicants representative refuted the relevance of the issues raised and noted there was no statutory basis for same. There were no other matters arising from parties.

The Tribunal advised that the Tenancy from 13th October 2012 to 13th October 2013 then monthly thereafter had been properly constituted. An AT5 had been served prior to the term on 12th October 2012. A Notice to Quit was properly served on 10th May 2019. The Respondent required to remove by 13th July 2019. The correct lsh date of 13th July 2019 had been used and no contractual tenancy exists. The Tribunal noted no submissions in dispute regarding these facts were made by any party.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988

Reasons for Decision

1. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property.
2. The Tribunal was satisfied that the tenancy was in terms of Section 32(1) of the 1988 Act, a short assured tenancy for not less than 6 months and in relation to which a prescribed notice namely a valid AT5 had been served before creation of the short assured tenancy. The Respondent made no submission that the AT5 had not been served correctly at the outset of the tenancy.

Karen Kirk

3. In terms of Section 33 of the 1988 Act the Tribunal considered that the Short Assured Tenancy had reached its ish.
4. Further the Tribunal was satisfied that no tacit relocation was operating, no further contractual tenancy was in existence and a valid Notice to Quit had been served on the Respondent terminating the tenancy with the necessary notice given to the Respondent.
5. Accordingly, in terms of Section 33 of the 1988 Act the Tribunal granted an order against the Respondent for possession of the Property.
6. There being no valid defence given to the Application the Tribunal saw no purpose in a continuation.
7. The Respondents representative did not raise any relevant issues with any statutory basis which had an effect on the Tribunals decision to grant the Order for possession and did not intimate any valid or otherwise defence to same.

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 Kirk

Legal Member/Chair

23/9/19.

Date