



**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 (“the 1988 Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/EV/18/3147**

**Re: Property at Flat 3/2, 52 Strathblane Gardens, Glasgow, G13 1BX (“the Property”)**

**Parties:**

**Mr Callum Saunders McCrae and Mrs Susan McCrae, care of Let it B Lettings, 20-23 Woodside Place, Glasgow, G3 7QF (“the Applicants”)**

**Gilson Gray LLP, 29 Rutland Square, Edinburgh, EH1 2BW (“the Applicant’s Representative”)**

**Mr Edward Gallacher and Ms Lindy Melvin, Flat 3/2, 52 Strathblane Gardens, Glasgow (“the Respondents”)**

**Tribunal Members:**

**Susanne L M Tanner Q.C. (Legal Member)**

**Decision (in absence of Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) (i) was satisfied in terms of Section 33 of the 1988 Act that the short assured tenancy for the Property has reached its end; tacit relocation is not operating; no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and the Applicants have given to the Respondents two months’ notice stating that they require possession of the house; (ii) made an order for possession in terms of Section 33 of the 1988 Act and (iii) refused the Applicants’ application for expenses in terms of Rule 40 of the 2017 Rules.**

## Statement of Reasons

1. The Applicants' Representative made an application to the tribunal on 20 November 2018 in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicant seeks the Respondent's eviction from the Property under Section 33 of the 1988 Act (possession on termination of a short assured tenancy); and expenses in terms of Rule 40 of the 2017 Rules.
3. The Applicant lodged:
  - 3.1. a copy of the AT5 notice to the First Respondent, Edward Gallagher dated 13 October 2015 and a copy of the AT5 Notice to the Second Respondent, Lindy Melvin dated 13 October 2015;
  - 3.2. a copy of the short assured tenancy agreement between the Applicants and the Respondents dated 13 October 2015;
  - 3.3. Copies of the two notices to the Respondents under Section 33(1)(d) of the 1988 Act, dated 7 September 2018, notifying the Respondents that the Applicant required possession of the Property as at 13 November 2018;
  - 3.4. Copies of two Notices to Quit dated 7 September 2018, notifying the Respondents that they were required to remove from the Property with effect from 13 November 2018;
  - 3.5. Sheriff Officer's Certificate of service of the Notice to Quit and Section 33 Notice dated 10 September 2018;
  - 3.6. a copy of the Section 11 Notice which was sent to the local authority.
4. On 18 December 2018, the Application was rejected by a legal member of the tribunal with delegated powers of the Chamber President, in terms of Rule 8 of the 2017 Rules.
5. On 27 November 2018, the Applicants' Representative lodged a permission to appeal the decision of 18 December 2018 of the legal member with delegated powers to reject the Application.
6. On 16 January 2019, the tribunal reviewed its decision dated 18 December 2018 to reject the application, determined to set aside the decision under section 44(10)(b) of the Tribunals (Scotland) Act 2014; to re-decide the matters under

Section 44(2)(a); and to continue the matter to a Case management Discussion (CMD) on a date to be notified to parties.

7. On 16 January 2019, the Application was accepted for determination and a Case Management Discussion ("CMD") was thereafter fixed for 5 March 2019 at 1400 in Glasgow Tribunals Centre, 20 York Street, Glasgow.
8. On 11 February 2019 parties were notified by letter of the date, time and place of the CMD and told that they were required to attend. Parties were also advised in the same letter that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the Application, which may involve making or refusing an eviction order. If parties do not attend the CMD this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Respondent was afforded the opportunity to return written representations to the tribunal's offices by 25 February 2019.
9. The Application paperwork and notification of the date, time and place of the CMD was personally served on the Respondents on 12 February 2019.
10. The Respondents did not submit any written representations or make any contact with the tribunal's administration following service of the documentation.

**11. Case Management Discussion ("CMD"): 5 March 2019 at 1400 at Glasgow Tribunals Centre, Room 109**

- 11.1. A CMD took place on Tuesday 5 March 2019 at 1400h at Glasgow Tribunals Centre, 20 York Street, Glasgow, Room 109.
- 11.2. Mr Fraser Cameron, Solicitor from the Applicant's Representative on behalf of both Applicants, attended together with the first Applicant, Mr Callum McCrae.
- 11.3. The Respondents did not appear or make any contact with the tribunal's administration. The tribunal has a certificate of service on the Respondents of notification of the date, time and place of the CMD and the Application paperwork on 12 February 2019. The tribunal was satisfied that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the parties present and all the material before it, in terms of Rule 29 of the 2017 Rules.

11.4. The tribunal chair indicated to parties that there was the possibility of the Respondents applying for recall of any decision of the tribunal because the tribunal made the decision in absence because that party did not take part in proceedings, failed to appear or be represented at a hearing, in terms of Rule 30 of the 2017 Rules; and that any such Application would have to be in writing, in time and state why it was in the interests of justice for the decision to be recalled.

#### **11.5. Oral Submissions on behalf of the Applicants**

11.5.1. The Respondents served AT5 Notices on each tenant on 13 October 2015. The short assured tenancy agreement was signed by all parties on 13 October 2015. The Applicant confirmed that the AT5 Notices were signed by both Respondents before the lease was signed at 1835h.

11.5.2. The tenancy agreement provides that the date of entry to the Property was 13 October 2015 and the original date of termination was specified as 13 April 2016. Paragraph 1.1 provides that "if the agreement is not brought to an end by either party on the end date it will continue thereafter on a monthly basis until terminated by either party giving no less than two months' notice to the other party."

11.5.3. Paragraph 20 provides that the ways in which the short assured tenancy can be ended, include: "20.1 The tenancy reaching its end date and the landlord giving two months' prior written notice that possession of the house is required in terms of section 33 of the Housing (Scotland) Act 1988 at that end date"; and "20.2 By the landlord serving on the tenant a Notice to Quit, ... to terminate the tenancy at its end date... ."

11.5.4. It was submitted on behalf of the Applicants that the tenancy had reached its end on 13 April 2016 as it had continued by tacit relocation on a month to month basis from then, until terminated with the service of a valid notice to quit and Section 33 notice date 7 September 2018 (and served on 10 September 2018, notifying the Respondents that the Applicant required vacant possession of the Property as at 13 November 2018 and that the Respondents were required to remove from the property on or before 13 November 2018. Said notices were served at least two months before possession of the house was required. The Application to the tribunal was made within the period of 6 months from the date of service of the notices.

11.5.5. The section 11 Notices were emailed to the Council.

## **11.6. Applicants' application for expenses in terms of Rule 40 of the 2017 Rules**

11.6.1.1. Mr Cameron stated that the application for expenses in terms of Rule 40 is still insisted upon on behalf of the Applicants, on the basis that the Respondents' unreasonable behaviour in not engaging with the process has put the Applicants to unnecessary or unreasonable expense of instructing solicitors and attending the Case Management Discussion on 5 March 2019. Mr Cameron stated that he appreciates that the tribunal's hands may be tied in a case where the Respondent have not entered appearance and accepted that "conduct of the case" was likely to be interpreted by the tribunal as behaviour on the part of the Respondents which relates to the proceedings rather than remaining in the Property. Mr Cameron submitted that there had been a complicated procedure from the time that the Application was made, referring to the refusal of the Application followed by permission to appeal and then review of the decision. In relation to a question from the tribunal Chair about whether he accepted that the Respondents would have no knowledge of the tribunal proceedings until service of the Notice of Acceptance and other documents on 12 February 2019, Mr Cameron accepted that the period in relation to which he was making submissions began on 12 February 2019. Mr Cameron also clarified that he was not submitting that any period of time in relation to the previous application which was withdrawn on 19 November 2018 should be considered. Mr Cameron submitted that the relevant period is from 12 February 2019 until 5 March 2019. Mr Cameron submitted that Mr McCrae had travelled some way to be at the Case Management Discussion and he felt that that his attendance was necessary, as naturally the recovery of the Property is important to him and his wife. Mr Cameron submitted that the lack of any engagement whatsoever by the Respondents could amount to unreasonable behaviour in the conduct of the case which had put the Applicants to unnecessary or unreasonable expense.

12. The tribunal makes the following findings-in-fact:

12.1. There was a short assured tenancy between the parties for the initial period 13 October 2015 to 13 April 2016;

12.2. Thereafter the tenancy continued by tacit relocation on a monthly basis;

- 12.3. The short assured tenancy reached its end on 13 November 2018 by service on behalf of the Applicants on the Respondents, on 10 September 2018, of Notices to quit dated 7 September 2018, notifying the Respondents that the tenancy would reach its termination date as at 13 November 2018.
- 12.4. Tacit relocation is no longer operating;
- 12.5. No further contractual tenancy is for the time being in existence.
- 12.6. Section 33 notices were served on behalf of the Applicants on the Respondents on 10 September 2018, notifying the Respondents that the Applicants required vacant possession as at 13 November 2018.
- 12.7. The Applicant has given to the Respondents at least two months' notice stating that they require possession of the Property.
- 12.8. The Application to the tribunal was made on 20 November 2018 which is within the period of 6 months from the date of service of the notices.

### **13. Findings in Fact and Law**

- 13.1. The tribunal is satisfied that the requirements of Section 33 of the 1988 Act are met and therefore must make an order for possession of the Property.

### **14. Application for Expenses in terms of Rule 40**

- 14.1. The Respondents have not engaged with the tribunal process since service on 12 February 2019 of the Notice of Acceptance, the Application paperwork and notification of the date, time and place of the case management discussion.
- 14.2. The Respondents did not appear at the Case Management Discussion of which they had been notified, on 5 March 2019 at 1400 at Glasgow Tribunals Centre.
- 14.3. The tribunal is not satisfied that the Respondents' failure to engage in the tribunal process from service of documents on 12 February 2019 or to appear or be represented at the Case Management Discussion on 5 March 2019, amounts to unreasonable behaviour on the part of the Respondents in the conduct of the case which has put the Applicants to unnecessary or unreasonable expenses in terms of Rule 40 of the 2017 Rules.

14.4. The tribunal's normal procedure upon acceptance of an Application is to fix further procedure, which is likely to take the form of a Case Management Discussion, such as happened in this case. It was a matter for the Applicants whether they chose to attend the Case Management Discussion in addition to instructing a legal representative to attend. The Respondents failure to engage or attend the CMD, in the circumstances of the application, does not amount to unreasonable behaviour in the conduct of the case. There has been no unnecessary or unreasonable expense to the Applicants occasions by any unreasonable behaviour on the part of the Respondents in the conduct of the case.

14.5. The tribunal refused the Applicants' application for expenses in terms of Rule 40.

### **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.**

S. L M Tanner Q.C.

**5 March 2019**

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**Susanne L M Tanner Q.C.  
Legal Member/Chair**