



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 33 of the Housing (Scotland)
1988 Act**

Chamber Ref: FTS/HPC/EV/19/3942

Re: Property at 63 Anderson Drive, Irvine, KA12 9HY (“the Property”)

Parties:

Mr Donald Watson, 14 Glenbervie Wynd, Irvine, KA11 4DL (“the Applicant”)

Ms Lesley Ann Strain, 63 Anderson Drive, Irvine, KA12 9HY (“the Respondent”)

Tribunal Members:

Jan Todd (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 should be granted.

- **Background**
 1. This was a case management discussion to consider the application made by the Applicant dated 10th December 2019 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules.
 2. The Applicant is a joint owner of the Property and Landlord. The Applicant attended the CMD along with the joint owner Mrs Karen Watson who was present as a supporter.
 3. Mrs Karen Watson had indicated her consent as joint owner to the letting of the Property to the Respondent.
 4. The Respondent did not attend nor did the Respondent lodge any written representations.
 5. The Applicant had lodged and the Tribunal had sight and considered the following documents:-
 - a. Copy Tenancy Agreement for the Property dated 7th April 2015
 - b. Copy AT5 Notice dated 7th April 2015
 - c. Notice to Quit dated 4th October 2019

- d. S33 Notice dated 4th October 2019
- e. Certificate of service of Notice to Quit and S33 notice by Sheriff Officers on 4th October 2019
- f. S11 notice to the North Ayrshire Council dated 9th December 2019

The Hearing

6. The Legal Member explained the purpose of the hearing and advised that the Tribunal could do anything at a case management discussion which it may do at a hearing.
7. The Respondent, who is the tenant, did not attend the hearing and had made no written representations prior to the hearing despite notice of the hearing and the above documentation being served on her by Sheriff Officers on 6th January 2020.
8. The applicant advised that he believed the Respondent was still in the Property and he confirmed that she has paid no rent since 1st June 2019. He further explained that some rent had been paid from housing benefit with the Respondent paying a top up herself. He believes the respondent had been expecting universal credit but is not sure she has applied for it. Notwithstanding that he confirmed there has been no payment of rent since June 2019 and the arrears currently stand at £4188.36.
9. The Applicant is seeking an order for eviction.

Findings in Fact

10. The Applicant and Respondent have entered into a short assured tenancy of the Property for a period of 6 months from 7th April 2015 which continued on a month to month basis after the initial 6 months.
11. The Applicant is the Landlord and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
12. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
13. The rent is £ 550 per calendar month.
14. The rent outstanding as at 2nd February 2020 is £ 4,188.36.
15. The Applicant has served by Sheriff Officers, a Notice to quit and S33 notice on the Respondent terminating the contractual tenancy and giving notice that he required possession of the Property by 7th December 2019 being an ish date of the tenancy.
16. The Respondent who is the tenant has not vacated the property or responded to the Notice to Quit or S33 notice.
17. The Respondent has been served notice of this application and has made no representations in relation to this Application.

Reasons for Decision

18. The Applicant has entered into a Short Assured Tenancy with the Respondent.

19. S33 of the Act says "Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act the First Tier Tribunal for Scotland shall make an order for possession of the house if it is satisfied-
- a) That the short assured tenancy has reached its end
 - b) That tacit relocation is not operating
 - c) That no further contractual tenancy is for the time being in existence and
 - d) That the landlord (or where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.

The period of notice required to be given under S33 (1) (d) above is two months, in accordance with the legislation and the terms of the tenancy.

20. The Short Assured tenancy has reached its end, tacit relocation is not operating due to the service of the notice to quit and there is no further contractual tenancy in existence, so the Applicant having given notice in terms of S33 above, is entitled to repossess the Property.
21. The Tribunal is able to make any order at a case management discussion as it can after a Hearing.
22. Considering the Respondent had made no representations and did not attend the hearing, that there is no discretion to the Tribunal in these circumstances, the Tribunal felt it was necessary, and appropriate to grant a full order for repossession at this hearing.

- **Decision**
- **An order for possession is granted.**

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.

Jan Todd

Legal Member/Chair

3rd February 2020

Date