



**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 (Act)**

**Chamber Ref: FTS/HPC/EV/19/0928**

**Re: Property at Craigarnhall Cottage No 2, Keir, Bridge of Allan, Stirling, FK9 4NG (“the Property”)**

**Parties:**

**Keir and Cawder Estates Limited, Keir Estate Office, Craigarnhall, Bridge of Allan, FK9 4NG (“the Applicant”)**

**Miss Clare Hyslop, Mr William Byrne, Craigarnhall Cottage No 2, Keir, Bridge of Allan, Stirling, FK9 4NG; Craigarnhall Cottage No 2, Keir, Bridge of Allan, Stirling, FK9 4NG (“the Respondents”)**

**Tribunal Members:**

**Alan Strain (Legal Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction and recovery of possession be granted.**

**Background**

**This is an application for eviction and recovery of possession under section 33 of the Act and Rule 66 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Regulations)*.**

**The Tribunal had regard to the following documents:**

- 1. Application received 21 March 2019;**
- 2. AT5 dated 21 January 2015;**
- 3. Short Assured Tenancy (SAT) signed and dated 21 January 2015 and commencing 1 February 2015;**

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4. Section 33 Notice to both Respondents dated 31 July 2018 requiring vacant possession as at 1 October 2018;
5. Sheriff Officer's Certificate of Service of both Section 33 Notices dated 1 August 2018;
6. AT6 dated 31 July 2018 served on both Respondents intimating that 28 September 2018 was the earliest date proceedings could be raised under section 19 of the Act;
7. Sheriff Officer's Certificate of Service of AT6 dated 1 August 2018;
8. Notice to Quit to both Respondents dated 31 July 2018;
9. Sheriff Officer's Certificate of Service of Notice to Quit dated 1 August 2018;
10. Section 11 Notice to Stirling Council and covering letter dated 15 March 2019.

### **Case Management Discussion (CMD)**

The case called for a CMD on 5 August 2019. The Applicant was not present but was represented by Ms Leng, Solicitor. The Respondents were not present nor were they represented.

The case had called for an earlier CMD on 17 May 2019. At that time both Parties had participated and the case had been adjourned for the Applicant's solicitor to provide her client's evidence of title to the Property. The case had been adjourned to 26 June 2019 for that purpose.

By emails of 19 June 2019 the Applicant's solicitor forwarded details of the title to the Property along with Written Submissions which were copied to the Respondents. The Respondents sought an adjournment of the CMD in order to seek advice by email of 25 June 2019. The adjournment was granted and the CMD was continued to 5 August 2019.

Notification of the CMD fixed for 5 August 2019 was made to the Parties by Royal Mail on 2 July 2019.

The Applicant's solicitor forwarded Written Submissions, a written motion and further documentation to the Tribunal under cover of an email of 10 July 2019. The motion asked the Tribunal to grant the order for eviction and recovery of possession on the basis of the information the Tribunal had before it and without a hearing. The basis for the motion was that the only issue had been the Applicant's title to the Property which had now been adequately vouched. No written submissions had been lodged by the Respondents and the facts of the matter were not in dispute.

The Motion, Written Representations and other documents were crossed over to the Respondents by the Tribunal on 12 July 2019 by email. The Respondents acknowledged receipt.

The Tribunal made no order with regard to the Motion in advance of the CMD.

The Tribunal was satisfied that the Respondents had notification of the CMD and that the Tribunal could determine the matter in their absence if it was satisfied that it had sufficient information to do so and the procedure has been fair.

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The Tribunal accordingly decided to proceed in absence of the Respondents.

The Applicant's solicitor informed the Tribunal that the Respondents had moved to Portugal but had left possessions and belongings in the Property. The Applicant still wished the order for eviction and recovery of possession to be granted under Rule 66.

The Tribunal considered the documentation before it and made the following findings in fact:

1. The Applicant is the owner of the Property;
2. The Parties entered in to the SAT commencing 1 February 2015;
3. The SAT was a validly constituted SAT under the Act;
4. Notice to Quit was served by Sheriff Officers on both Respondents on 1 August 2018 terminating the SAT at its "ish" on 1 October 2018;
5. Section 33 Notice under the Act had been served by Sheriff Officers on both the Respondents on 1 August 2018 advising that the Applicant required possession as at 1 October 2018;
6. The SAT had terminated as at 1 October 2018 and tacit relocation was not operating;
7. The Respondents remained in occupation and possession of the Property;
8. Section 11 Notification had been served on the local authority on 15 March 2019.

The Tribunal then considered the terms of section 33 of the Act. The Tribunal was satisfied that the SAT had been validly terminated and tacit relocation was no longer operating. The Notices had been served validly. The Respondents remained in occupation and possession of the Property.

The Tribunal was satisfied that it had sufficient information upon which to determine the matter and the procedure was fair. The Tribunal considered that the requirements of section 33 had been established and that it was fair to grant the order for eviction and recovery of possession in the circumstances.

The Tribunal accordingly granted the order for eviction and recovery of 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.**

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Legal Member/Chair

Date

*5 August 2019*