



**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/19/0068**

**Re: Property at 67 Donald Crescent, Troon, KA10 6PJ (“the Property”)**

**Parties**

**Gregory Frenguelli, 66 Jean Armour Drive, Kilmarnock, KA1 2SD (“the Applicant”)**

**Thomas Hanvey, 67 Donald Crescent, Troon, KA10 6PJ (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member)**

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

The First-tier Tribunal for Scotland has decided to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988. **The order will be issued to the Applicant after expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.**

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. By application dated 10 January 2019, the Applicant’s representative Stephen Hill from Homesure Properties Limited applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for

recovery of possession of the property at 67 Donald Crescent, Troon, KA10 6PJ ("the Property") under Section 33 of the Housing (Scotland) Act 1988.

2. The application was accompanied by a Short Assured Tenancy signed and dated 6 October 2015, a Notice to Quit and Section 33 Notice both dated 14 June 2018, an execution of service from Stirling Park Sheriff Officers dated 20 June 2018, an email dated 9 January 2019 from the Applicant addressed to Homesure and a Notice under Section 11 of the Homelessness, etc (Scotland) Act 2003 dated 10 January 2019 addressed to South Ayrshire Council.
3. On 10 January 2019 the Tribunal requested sight of the AT5. Homesure on behalf of the Applicant forwarded a copy of the AT5 dated 6 October 2015 to the Tribunal on 15 January 2019.
4. On 28 January 2019 the Tribunal gave notification of acceptance of the application to the Applicant and the Respondent under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
5. On 13 February 2019 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 1 March 2019. The Tribunal advised both parties on 14 February 2019 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 7 March 2019. This paperwork was served on the Respondent by Alan Davie, Sheriff Officer, Glasgow on 14 February 2019 and the certificate of execution of service was received by the Tribunal administration.
6. The Respondent did not make any written representations by 1 March 2019.

#### **Case Management Discussion**

7. The Tribunal proceeded with the Case Management Discussion on 7 March 2019. The Applicant was represented by Stephen Hill from Homesure. The Respondent appeared personally and was accompanied by his friend Mr Collins.
8. The Tribunal had before it the Short Assured Tenancy Agreement between the Applicant and the Respondent signed and dated 5 October 2015, the AT5

signed and dated 5 October 2015, the Notice to Quit addressed to the Respondent dated 14 June 2018, the Notice under Section 33 of the Housing (Scotland) Act 1988 also dated 14 June 2018 addressed to the Respondent, Sheriff Officer's Execution of Service dated 20 June 2018, and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to South Ayrshire Council dated 9 January 2019.

9. Mr Hill confirmed he was asking the Tribunal to grant an order for eviction under Section 33 of the Housing (Scotland) Act 1988. He explained that his client was undecided what he was going to do with the Property.
10. The Tribunal considered the Short Assured Tenancy and the AT5 ("the tenancy"). Both parties accepted that that was the tenancy agreement relating to the Property and that it commenced on 5 October 2015 and continued until 7 April 2016 and then on a monthly basis thereafter. Both parties accepted that the tenancy was continuing on a monthly basis.
11. The Tribunal also considered the Notice to Quit and the Notice under Section 33 of the Housing (Scotland) 1988 dated 14 June 2018 bringing the contractual tenancy to an end and requiring the Respondent to leave the Property by 7 September 2018. Both notices were served on the Respondent by Sheriff Officers on 20 June 2018. The Respondent pointed out to the Tribunal that the Sheriff Officers execution to him had erroneously been dated 20 June 2015, but accepted that the Notices had been served on 20 June 2018.
12. The Respondent also queried whether the Notice to Quit was only valid for 6 months; he had been advised that that was the case by the Citizens Advice Bureau. The Tribunal explained that that was not the case and that what he had been told was possibly reference to a Form AT6 which a landlord could choose to be served if a tenant had breached the terms of the tenancy. The Tribunal also explained that in this case the Landlord had not used the Form AT6 and as relying on the Section 33 Notice and the Notice to Quit to terminate the tenancy.
13. The Respondent started to explain that he had arrears and that he was attempting to sort these out by ensuring direct payments were made to the Applicant. The Tribunal explained that it had been unaware there were arrears of rent and that arrears were not an issue which was before it.

14. Mr Hill submitted that he was seeking repossession in terms of Section 33 of the Housing (Scotland) Act 1988. The Tribunal pointed out to the Respondent that in all the circumstances the Tribunal had no option but to grant an order for repossession.

### **Findings in Fact**

15. The Applicant is the heritable proprietor of the Property at 67 Donald Crescent, Troon, KA10 6PJ.
16. The Applicant let the Property to the Respondent under a Short Assured Tenancy dated 5 October 2015 with a start date of 5 October 2015 until 7 April 2016. The tenancy continued on a monthly basis thereafter. The Respondent is the tenant of the Property.
17. On 20 June 2018 by way of Sheriff Officers the Applicant served a Notice to Quit terminating the tenancy on 7 September 2018.
18. On 20 June 2018 by way of Sheriff Officers the Applicant served a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 indicating to the Respondent that he intended to take possession of the Property on 7 September 2018.
19. There was no other contractual tenancy in existence between the parties.
20. The Respondent continues to reside in the Property having failed to vacate on 7 September 2018.

### **Reasons for Decision**

21. The Tribunal considered the issues set out in the application and the submissions of the parties during the Case Management Discussion. The Tribunal concluded that the Applicant was entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988.
22. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met and which would entitle the Applicant to repossess the Property namely that-

- i. the Short Assured Tenancy had reached its ish (termination date) on 7 September 2018;
- ii. the contractual tenancy was not continuing as the Notice to Quit having been validly served on 20 June 2018 brought the contractual Short Assured Tenancy to an end on 7 September 2018;
- iii. no further contractual tenancy was in existence; and
- iv. that the Applicant had given the Respondent at least 2 months' notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 on 20 June 2018 stating that possession of the property was required on 7 September 2018.

23. In terms of Section 33(1) of the Housing (Scotland) Act 1988 the Tribunal shall make an order for possession where it is satisfied that the statutory terms of Section 33 of the Housing (Scotland) Act 1988 have been met. Accordingly, the Tribunal found that the Applicant was entitled to an order for possession of the Property and accordingly granted the order sought.

### **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.

Shirley Evans

  
Shirley Evans  
Legal Member

7 March 2019