

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**

Chamber Ref: FTS/HPC/EV/18/0572

**Re: Property at Kilphin House, Glenapp Estate, Ballantrae, Girvan, KA26 0NY
("the Property")**

Parties:

**Mr Clive Wilson, Mrs Denise Wilson, Tivoli House, Perth Road, Abernethy, PH2
9LW ("the Applicant")**

**Mr Walter Haddow, Mrs Eileen Haddow, Kilphin House, Glenapp Estate,
Ballantrae, Girvan, KA26 0NY ("the Respondent")**

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the application should be granted without a hearing
and that an Order for Possession should be issued.**

Background

A previous Decision of the Tribunal made on 31 May 2018 was recalled by the Tribunal on 6 August 2018, as the Respondent had been unable, for health reasons, to attend the Case Management Discussion on 31 May 2018 and the second-named Respondent had stated in her application for recall that she had not received a letter from the Applicant of 30 August 2017 with a Notice to Quit and a Notice given under Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). As there was a dispute regarding the signature on the recorded delivery slip, the application for recall was granted and the application as assigned to a fresh case management discussion.

The Case Management Discussion

A Case Management Discussion was held at Russell House, King Street, Ayr on the afternoon of 31 October 2018. The Applicant attended the Case Management Discussion and was represented by Bob Cherry and Marjory Douglas of CKD Galbraith. The Respondent was not present or represented.

Findings in Fact

- The Tribunal has seen a copy of a Short Assured Tenancy Agreement between the Parties in respect of the Property. The tenancy commenced on 18 December 2014 and the initial term was the period to 19 December 2017.
- The Tribunal has seen copies of the Form AT5 Notice given prior to the commencement of the tenancy and acknowledged by the Respondent on 14 November 2014.
- The Tribunal has seen copies of a Notice to Quit and a Notice given under Section 33 of the 1988 Act. Both are dated 30 August 2017 and require the Respondent to vacate the Property by 19 December 2017. The Notices bear to have been sent by First Class Recorded Delivery post. They were sent by the Applicant's solicitors. There is one addressed to each of the First and Second Respondent at the Property address.
- The Tribunal has seen copies of two Certificates of Posting dated 30 August 2017 under reference numbers KK347507986GB and KK347507867GB.
- The Tribunal has seen a copy Track and Trace documents confirming that items KK347507986GB and KK347507867GB were delivered at 11.26am on 31 August 2017 and that they were signed for by "Haddow". The signature box on each of the document bears the signature "W Haddow".

Reasons for Decision

The Tribunal noted the contention of the second-named Respondent that she had not received the documents sent to her by the Applicant's solicitors on 30 August 2018, but the Tribunal was satisfied from the documentary evidence before it that the Notice to Quit and the Section 33 Notice had both been delivered to the Respondent at the Property address on 31 August 2018 and had been signed for by W Haddow. The Applicant had to show that they had been delivered and signed for and there was clear evidence that this had happened.

Rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations state that the Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

The Tribunal was satisfied that it had before it all the information it required in order to make a decision on the application and decided to do so without a hearing.

The Tribunal was satisfied that the tenancy is a Short Assured Tenancy, that it has reached its term, that tacit relocation is not operating, that no further contractual tenancy is operating and that the Applicant has given to the Respondent notice stating that the Applicant requires possession of the Property. Accordingly, the Tribunal held that the requirements of Section 33 of the Housing (Scotland) Act 1988 had been met and that the Tribunal was required to grant the application and to make an Order for possession of the Property.

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.

George Clark
Legal Member/Chair

31 October 2018
Date