



**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/19/2765**

**Re: Property at 27 Brodie Drive, Elgin, Moray, IV30 4LS (“the Property”)**

**Parties:**

**Ms Mairi McLeod, 65 Wards Road, Elgin, IV30 1TJ (“the Applicant”)**

**Cluny Estate Agents, 5 Thunderton Place, Elgin, Moray, IV30 1TJ (“the  
Applicant’s Agent”)**

**Miss Bibiana Aldrick and Mr Liam Nathan Strother, 27 Brodie Drive, Elgin,  
Moray, IV30 4LS (“the Respondents”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined to make an order for repossession against the  
Respondents.**

**Background**

- 1 By application dated 4th September 2019 the Applicant sought an order for repossession against the Respondents under section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The following documents were submitted in support of the application:-
  - (i) Copy Tenancy Agreement between the parties dated 1<sup>st</sup> March 2017 together with Form AT5;
  - (ii) Copy Notice to Quit dated 28 June 2019;

- (iii) Copy Notice under section 33(1)(d) of the 1988 Act dated 28 June 2019;
  - (iv) Proof of recorded delivery service dated 28 June 2019 in relation to Notice to Quit and Notice under section 33(1)(d); and
  - (v) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Moray Council.
- 2 By Notice of Acceptance of Application dated 19 September 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds to reject the application. A Case Management Discussion was therefore assigned for 5<sup>th</sup> November 2019.
- 3 The application paperwork together with notification of the Case Management Discussion was served on the Respondents by Sheriff Officers on 3<sup>rd</sup> October 2019.

#### **The Case Management Discussion**

- 4 The Case Management Discussion took place on 5<sup>th</sup> November 2019. The Applicant was represented by Mr Beck from Cluny Estate Agents. The Respondents were both present.
- 5 The Legal Member explained the purpose of the Case Management Discussion. She asked the Respondents what their position was. Ms Aldrick confirmed that they had obtained a tenancy with a local housing association and were due to view the property and sign the paperwork tomorrow. Mr Beck confirmed this was the case. He explained that he had sympathy for the position the Respondents had found themselves in and confirmed that they had been in regular communication with the Applicants' Agent regarding their intentions. Ms Aldrick confirmed that she would hope to be in a position to return the keys for the property by the 18<sup>th</sup> November.
- 6 The Legal Member then noted that the Respondents were not disputing the terms of the application. On the basis that the Applicant had complied with the requirements of section 33 of the 1988 Act, the Legal Member confirmed that she would grant the order for repossession and that it would be enforceable in approximately 30 days which would give the Respondents the time they required to move out of the property.

#### **Findings in Fact and Law**

- 7 The parties entered into a Tenancy Agreement dated 1<sup>st</sup> March 2017;

- 8 The term of the tenancy was 1<sup>st</sup> March 2017 to 1<sup>st</sup> September 2017 and monthly thereafter;
- 9 The tenancy was a Short Assured Tenancy as defined by section 33 of the Housing (Scotland) Act 1988.
- 10 The Respondents have been served with a Notice to Quit terminating the tenancy as at 1<sup>st</sup> September 2019 and Notice under section 33(1)(d) of the Housing (Scotland) Act 1988 informing them that the Applicant required possession of the property as at that same date. Both Notices were served by recorded delivery mail on 28<sup>th</sup> June 2019.
- 11 The Short Assured Tenancy has reached its ish as at 1<sup>st</sup> September 2019. Tacit relocation is not operation. There is no further contractual tenancy in existence between the parties.
- 12 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

### **Reasons for Decision**

- 13 The Tribunal was satisfied that it was able to make a decision at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Tribunal noted from their verbal submissions at the Case Management Discussion that the Respondents had obtained alternative accommodation and were simply seeking time to remove from the property. They were not seeking to dispute the terms of the application.
- 14 The Applicant sought recovery of possession under section 33 of the 1988 Act which provides that the Tribunal must order repossession in the following circumstances:-
  - (i) Where the tenancy has reached its ish;
  - (ii) Tacit relocation is not operating;
  - (iii) No further contractual tenancy is in existence; and
  - (iv) The tenants have been given at least two months notice that the landlord requires repossession of the house.
- 15 The Tribunal accepted based on its findings in fact that the provisions of section 33 had been met. The Notice to Quit had terminated the tenancy as at the 1<sup>st</sup> September 2019 which was a valid ish date under the terms of the tenancy agreement and the Respondents had been given the required notice under section 33(1)(d) of the 1988 Act. The Tribunal was therefore obliged to make an order for repossession against the Respondents.

### **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.**

Ruth O'Hare

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Legal Member/Chair

5/11/19  
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Date