



**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**

Reference number: FTS/HPC/EV/19/3110

Date Order was granted 3 August 2020 in absence of Respondent

Property: Little Cutstraw Farmhouse, Stewarton, KA3 5JE

Parties:

Cabin Developments Lt, 8 Fifth Avenue, Glasgow, G12 0AT ("the Applicant")

Ian Borrett, residing at Little Cutstraw Farmhouse, Stewarton, KA3 5JE ("the Respondent")

**Tribunal Members:**

**Paul Doyle (Legal Member)**

**Leslie Forrest (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") makes an order for possession of the Property in terms of section 33 of the Housing (Scotland) Act 1988.**

**Background**

1. The Applicant sought recovery of possession of the Property in terms of Section 33 of the Housing (Scotland) Act 1988 (the "1988 Act"). The Applicant had lodged with the Tribunal Form E. The documents produced were a Tenancy Agreement and form AT5 both dated 22 February 2011, a s.33 notice and a Notice to quit served on 28 June 2019 together with a notice under s.11 of the Homelessness (Scotland) Act 2003. A copy title sheet was lodged with the Tribunal which showed that the applicant is the heritable proprietor of the Property.

2. An evidential hearing took place before the Tribunal by telephone conference at 10.00am on 3 August 2020. The Applicants were represented by Harper MacLeod LLP. The respondent was neither present nor represented. He had previously been represented by solicitors who withdrew from acting on 29 July 2020. The respondent sought an adjournment by email dated 31 July 2020. He explained that he finds himself without a solicitor and is in the process of instructing a new solicitor.

3. This application has some procedural history. Case management discussions have been adjourned twice, once on the application of the applicant and once on the application of the respondent. Following the case management discussion on 14 January 2020 clear directions were sent to both parties to ensure that this case was ready for an evidential hearing today. We remind ourselves of regulation 2 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

4. At the case management discussion on 14 January 2020 the issues between the parties were clearly focused and findings of fact were made which enable us to justly determine this application today in the respondent's absence. Throughout the significant time allowed for preparation, the respondent had the benefit of legal representation. With a combination of the available documentary evidence, the facts already judicially determined, and the undisputed facts, this application can be justly determined today.

5. We refuse the application to adjourn and continue to consider this case on the available evidence.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Short-Assured Tenancy Agreement for the Property dated 22 February 2011.
2. The period of the Lease was from 9 November 2011 to 21 August 2011 and thereafter on a month to month basis. The rent in terms of the Tenancy Agreement was £400 per month.
3. The Tenancy Agreement set out the grounds on which the Landlord could seek recovery of possession of the Property in terms of Schedule 5 of the 1988 Act.
4. A Form AT6, a notice to quit and a s.33 notice were served on the Respondent on 28 June 2019. The tenancy is a short-assured tenancy and the respondent received the notice to quit, the s.33 notice and the form AT6 timeously.
5. An Application was made to the Tribunal on 5 October 2019 which was more than two months after the date of service of the AT6.

6. The Applicant sought recovery of possession of the Property in terms of s.33 of the Housing (Scotland) Act 1988 because the short-assured tenancy had been brought to an end on 22 August 2019 by the service of the s.33 notice.
7. The respondent opposes the application on two grounds
  - (i) The heritable proprietor of the property is the applicant, but the lease designates Robert and Jeanne Black as the Landlords. The respondent argues that no valid lease has been entered into
  - (ii) The respondent challenges the validity of the notice to quit and s.33 notice, arguing that they are signed and served by Robert and Jeanne Black, who cannot be the landlords because they do not own the subjects of let.
8. At a case management discussion on 14 January 2020 the Tribunal found in fact that the Lease will be deemed to be a valid lease provided Robert and Jeanne Black provide evidence that they accounted to the applicants for the rental they received from the respondent.
9. The applicant produces bank statements and pay in slips which adequately demonstrate that Robert and Jeanne Black accounted to the applicants for rental monies received from the respondent. At the case management discussion on 14 January 2020 the Tribunal found that Robert and Jeanne Black acted as agents for the applicants.
10. The lease is a valid short assured tenancy. The applicant has title to bring this application.
11. As the tribunal has already determined that Robert and Jeanne Black act as agents for the applicant, then the Notice to quit and the s.33 Notice (Both designating Robert and Jeanne Black as Landlords and both signed By Robert and Jeanne Black) are valid notices.
12. The respondent offers no further stateable defence to an application for eviction from the property. The Lease is a short-assured tenancy. A valid notice to quit has been served. A valid s.33 notice has been timeously served. Service of those notices brought the short-assured tenancy entered into between the parties to an end.
13. The respondent has no competent answer to the application for repossession.

### **Reasons for the Decision**

The Tribunal determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act. The tenancy was a short-assured tenancy. Correct notice was given which brought the short-assured tenancy to an end on 22 August 2019. The basis for possession set out in s.33 of the 1988 Act is established. The respondent offers no substantive defence to the application. The Tribunal has already found that Robert and Jeanne Black act as agents for the applicant. In that capacity they are designed as Landlords in the lease. In the same capacity they design themselves in the notice to quit and s.33 Notice. As agents they signed and served both notices. The finite time for occupancy of the property as a short-assured tenancy has come to an end. For these reasons, the Tribunal determined to grant an Order for possession. The AT6 has been served on the Respondent and has provided the requisite period of notice. This Application has been made within a period of 6 months after the service of the AT6.

### **Decision**

For the foregoing reasons, the Tribunal determined to make an Order for 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.**

Paul Doyle

**Legal Member**

**3 August 2020**