



**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 (“the 1988 Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/EV/18/2529**

**Re: Property at 75 Craggs Avenue, Paisley, Renfrewshire, PA2 6SG (“the Property”)**

**Parties:**

**Ms Gillian Campbell, Primrose Cottage, St Helier, Jersey, JE2 4PQ (“the Applicant”)**

**Belvoir Paisley, 8 Silk Street, Paisley, PA1 1HG (“the Applicant’s Representative”)**

**Mr Scott John Douglas McCallum, 75 Craggs Avenue, Paisley, Renfrewshire, PA2 6SG (“the Respondent”)**

**Tribunal Members:**

**Susanne L M Tanner Q.C. (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) was satisfied (a) that the short assured tenancy between the parties in respect of the Property has reached its end; (b) that tacit relocation is not operating; (c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and (d) the Applicant has given to the tenant more than two months’ notice stating that she required possession of the Property; and made an order for possession in terms of Section 33 of the 1988 Act.**

## Statement of Reasons

### 1. Procedural Background

- 1.1. The Applicant, care of the Applicant's Representative, made an application to the tribunal on 18 September 2018 in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
- 1.2. The Applicant submitted authority to the tribunal's administration for the Applicant's Representative to act on her behalf in relation to the Application.
- 1.3. The Applicant sought the Respondent's eviction from the Property under Section 33 of the 1988 Act.
- 1.4. The Applicant's Representative lodged:
  - 1.4.1. a copy of the short assured tenancy agreement dated 7 December 2016;
  - 1.4.2. a copy of the AT5 notice dated 7 December 2016;
  - 1.4.3. a copy of the Notice to Quit dated 5 July 2018;
  - 1.4.4. a copy of the Section 33 notice dated 5 July 2018;
  - 1.4.5. A copy of the Certificate of Service of the Notice to Quit and Section 33 Notice dated 9 July 2018;
  - 1.4.6. A copy of the Section 11 notice.
- 1.5. The Application was referred for determination by the tribunal on 24 October 2018.
- 1.6. A Case Management Discussion ("CMD") was fixed to enable the tribunal to explore how the parties' dispute may be efficiently resolved. Parties were notified by letter dated 9 November 2018 of the date, time and a place of the CMD. The Respondent was invited to submit any written representations by 27 November 2018. The notification and Application documentation was served on the Respondent by Sheriff Officers on 12 November 2018 by depositing through the letterbox at the Property after diligent enquiries were made and having established that he resided at the Property.
- 1.7. The Respondent did not submit any written representations or make any contact with the tribunal's administration.

**2. Case Management Discussion (“CMD”) – 30 November 2018 at 1000h Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT**

2.1. A CMD took place on 30 November 2018 at 1000h at Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT.

2.2. Mrs Denise Rhodes, from the Applicant’s Representative attended on behalf of the Applicant.

2.3. The Respondent did not appear or contact the tribunal’s administration.

2.4. The Applicant’s Representative sought an order for possession at the CMD in terms of Section 33 of the 1988 Act and Rule 66 of the 2017 Rules.

2.5. The Applicant’s Representative provided an updated address for the Applicant at: Primrose Cottage, St Helier, Jersey, JE2 4PQ.

2.6. Mrs Rhodes advised that the Applicant’s Representative had written to the Respondent to state that they were going to attend at the Property to do the checkout inspection. The Respondent did not make any contact with them. He was not in the Property when they attended to do the checkout inspection. He has around £2000 of rent arrears and the Applicant is considering whether to make a civil application to the tribunal seeking an order for payment. She stated that there has also been damage caused to the Property during the tenancy. The Respondent has not made any communication with the Applicant or the Applicant’s Representative about why he has not left.

2.7. The tribunal chair considered the documentation which had been lodged in support of the Application.

2.7.1. A valid AT5 dated 7 December 2016 which was signed before the creation of the Short Assured Tenancy has been provided.

2.7.2. The Short Assured Tenancy agreement between the parties in respect of the Property was signed by both parties on 7 December 2016. The initial term was for the period 7 December 2016 to 9 June 2017 and since then the tenancy has tacitly has relocated on a calendar monthly basis.

2.7.3. The minimum period of notice for termination of the lease by the Landlord, specified in Clause 1 the lease, is 2 months, with service to be by recorded delivery post or Sheriff Officers.

2.7.4. The Applicant’s Representative has provided proof of service of a Notice to Quit and Section 33 notice on 6 July 2018.

2.7.5. The Section 33 Notice notified the Respondent that the Applicant required possession of the Property on 9 September 2018. The Notice to Quit contains the prescribed information.

3. On the basis of the submissions and evidence on behalf of the Applicant, the tribunal makes the following findings-in-fact:

3.1.1. There was a Short Assured Tenancy agreement between the parties in respect of the Property for the initial period from 7 December 2016 to 9 June 2017.

3.1.2. Since 9 June 2017 the tenancy has tacitly has relocated on a calendar monthly basis.

3.1.3. The minimum period of notice for termination of the lease by the Landlord, is 2 months, with service to be by recorded delivery post or Sheriff Officers.

3.1.4. The Notice to Quit and Section 33 notice were served by Sheriff Officers on 6 July 2018.

3.1.5. The short assured tenancy reached its ish on 9 September 2018.

3.1.6. Tacit relocation is not operating.

3.1.7. No further contractual tenancy is for the time being in existence.

3.1.8. The Applicant has given the Respondent notice that she requires possession of the House on 9 September 2018.

#### **4. Findings in Fact and Law**

4.1. The requirements of Section 33 of the 1988 Act have been met, namely that (a) that the short assured tenancy between the parties in respect of the Property has reached its ish; (b) that tacit relocation is not operating; (c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and (d) the Applicant has given to the tenant more than two months' notice stating that she required possession of the Property.

4.2. The tribunal is therefore required to make an order for possession in terms of Section 33(1) of the 1988 Act.

## **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.**

**S Tanner**

**Susanne L M Tanner Q.C.  
Legal Member/Chair**

**30 November 2018**