

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 (Act)**

Chamber Ref: FTS/HPC/EV/19/1029

**Re: Property at No 2 Pitcorthie Mains, Colinsburgh, Leven, KY9 1JX (“the
Property”)**

Parties:

**Balcarres Heritage Trust, Balcarres Estate Office, Colinsburgh, Leven, KY9
1HJ (“the Applicant”)**

**Ms Katrina McGraw, No 2 Pitcorthie Mains, Colinsburgh, Leven, KY9 1JX (“the
Respondent”)**

Tribunal Members:

Alan Strain (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the order for eviction and recovery of possession
be granted.**

Background

This is an application for eviction and recovery of possession of the Property under
section 33 of the Act and Rule 66 of the Tribunal Rules of Procedure.

The case had been continued from a previous CMD on 6 August 2019 in order for
both Parties to produce further information and documentation (if such existed)
regarding the Respondent’s contention that the original Short Assured Tenancy
(SAT) had been varied or amended to a long term lease.

The Tribunal issued a Direction on 6 August 2019 requiring the Parties to produce
such documentation. The Applicant had complied with the Direction and produced

further information under cover of emails of 16 and 9 August 2019. No response had been received from the Respondent.

Prior to the continued CMD the Respondent's agents had withdrawn from acting.

The Tribunal had regard to the following documents:

1. Application received 2 April 2019;
2. SAT commencing 21 March 2005;
3. AT5 dated 4 March 2005;
4. Notice to Quit dated 17 January 2019;
5. Section 33 Notice dated 17 January 2019;
6. Certificate of Service by Sheriff Officers of Notice to Quit and Section 33 Notice dated 18 January 2019;
7. Section 11 Notice to local authority;
8. Written Representations from Respondent's agents dated 26 July 2019;
9. Written Representations from Applicant's agents dated 31 July 2019;
10. Emails and enclosures of 9 and 16 August, 5 September 2019 from the Applicant's agents;
11. Letter from Respondent's agents withdrawing from acting.

Case Management Discussion (CMD)

The case called for the continued CMD on 18 September. The Applicant was present and represented by Mr Shearer, Solicitor. Mr Cooper appeared on behalf of the Respondent and explained the Respondent was unwell and could not attend.

Mr Cooper produced a letter purporting to be from Strutt and Parker (the former Managing Agents for the Applicant) dated 13 March 2006 which stated that they had granted the Respondent a long term tenancy. The letter was unsigned.

The Tribunal questioned why this document had not been produced in compliance with the Direction. Mr Cooper explained that the Respondent's lawyers were no longer acting and he had been handed the letter by the Respondent who had lots of paperwork but had been unwell.

The Applicant questioned the validity of the letter.

The Tribunal proceeded to hear both parties on the Application and having considered what was said and the documentation produced made the following findings in fact:

1. The Parties entered in to a SAT commencing 21 March 2005;
2. No variation to the SAT had been made;
3. The SAT had been validly terminated by service of the Notice to Quit and Section 33 Notices dated 17 January 2019;
4. Tacit relocation was no longer operating;
5. Section 11 Notice had been given to the local authority.

The Tribunal considered the terms of section 33 of the Act. The requirements of section 33 had been fulfilled and the Tribunal determined that it had no discretion other than to grant the order for eviction and recovery of possession sought.

The Tribunal did not accept that the letter of 13 March 2006 amounted to a variation of the SAT.

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.

Alan Strain

Legal Member/Chair

18 September 2017

Date