

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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

**Chamber Ref: FTS/HPC/EV/20/1817**

**Re: Property at 85 Hopepark Drive, Cumbernauld, Glasgow, G68 9FG (“the Property”)**

**Parties:**

**Mr Gavin Forsyth, 23 Kingsmuir Drive, Smithstone, Cumbernauld, Glasgow, G68 9FB (“the Applicant”) per his agents Messrs, Pollock, Fairbridge, Schiavone, Solicitors, 8<sup>th</sup> floor, Buchanan Tower, Buchanan Business Park, Stepps, Glasgow, G33 6HZ (“the Applicant’s Agents”)**

**Mrs Linda Johnstone, 85 Hopepark Drive, Cumbernauld, Glasgow, G68 9FG (“the Respondent”) per her agents Messrs Barton & Hendry, Solicitors, Fleming House, Tryst Road, Cumbernauld G67 1JW (“the Respondent’s Agents”)**

**Tribunal Members:**

**Karen Moore (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Order for Possession be granted.**

1. By application received on 28 August 2020 (“the Application”), the Applicant’s Agents on behalf of the Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a possession order in terms of Section 33 of the Act. The Application comprised an application form, copy short assured tenancy agreement, copy notice to quit terminating the tenancy at the ish date of 11 May 2020, copy notice in terms of Section 33 of the Act confirming that the Applicant required possession of the Property and copy notice to North Lanarkshire Council, being the relevant local authority, in terms of Section 11 of the Homelessness (Scotland) Act 2003.
2. On 7 September 2020, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 16 October 2020 at 10.00 by telephone

conference call. The Application was intimated to the Respondent. The CMD was intimated to both Parties.

3. Prior to the CMD, the Respondent's Agents lodged written submissions with the Tribunal which were copied to the Applicant's Agents.

### **Case Management Discussion**

4. The CMD took place on 16 October 2020 at 10.00 by telephone. The Applicant did not take part and was represented by Mr. Fairbridge of the Applicant's Agents. The Respondent was not present and was represented by Mr. Cacace of the Applicant's Agents.
5. Ms. Fairbridge confirmed the Order sought.
6. The Tribunal had regard to the Respondent's Agents written submissions which put forward the position that the tenancy of the Property did not end until 11 May 2022. Mr. Cacace relied on Clause 4 of the tenancy agreement which states that the *"Tenancy will commence on 11 May 2013 and end on 11 May 2016 at midday"* and on Clause 39 of the tenancy agreement the relevant part of which states that *"In the event that the Tenant fails to give such written notice, the Tenancy will continue for a further period equal in length to the original period (unless terminated by the Landlord)"*, the notice being notice by the tenant to terminate the tenancy. Mr. Cacace submitted that the effect of these clauses taken together is that the tenancy agreement, by operation of tacit relocation, relocates from 11 May 2016 to 11 May 2019 and, thereafter, to 11 May 2022. Therefore, the tenancy cannot be brought to an end before 11 May 2022 in terms of Section 33 of the Act.
7. The Tribunal had regard to the wording of those clauses and, in particular, noted that Clause 39 states that *"In the event that the Tenant fails to give such written notice, the Tenancy will continue for a further period equal in length to the original period"*. The Tribunal's view is that this is not tacit relocation. It is not a silent agreement for the tenancy agreement to relocate but is an express contractual right or option to extend the term of the tenancy agreement for a further three year period as set out in Clause 4 of the tenancy agreement, which contractual right the Respondent exercised by not giving notice to terminate. The Tribunal's view, therefore, was that the contractual term of the tenancy agreement ended on 11 May 2019.
8. The Tribunal then had regard to the authoritative text, Rankine's *"The Law of Leases in Scotland"*, in respect of the application of the presumptive doctrine of tacit relocation. That text states that, with regard to leases with an initial term of more than one year, the doctrine applies in cycles of one year until the lease is terminated by one or other party. In this case, the tenancy agreement is a lease with an initial term of more than one year, and so, according to Rankine, tacit

relocation applies on yearly basis from 11 May 2019 to 11 May in each following year.

9. Mr. Fairbridge advised the Tribunal that this is also his interpretation of the duration of the tenancy agreement. In further support of this position, Mr. Fairbridge referred the Tribunal to the final phrase of Clause 39 of the tenancy agreement which states “*(unless terminated by the Landlord)*” and to Clause 40 of the tenancy agreement which sets out the Landlord’s rights to terminate the tenancy at “*its end date*” and in terms of Section 33 of the Act and Schedule 5 of the Act. Mr. Fairbridge submitted that, taken together, Clauses 39 and 40 of the tenancy agreement support the view that the term of the tenancy is fixed and that tacit relocation applies thereafter.
10. The Tribunal advised the Parties that its view was that the contractual term of the tenancy agreement ended on 11 May 2019 and that the term of tenancy agreement had been running on tacit relocation until terminated by or on behalf of the Applicant on 11 May 2020.
11. The Tribunal then turned to that part of the Respondent’s Agents written submissions which referred to the effect of the Coronavirus (Scotland) Act 2020 on the 1988 Act. Mr. Cacace accepted that the current proceedings were raised before the 2020 Act came into effect and so the mandatory provisions of Section 33 of the 1988 Act still applied to the Application. Accordingly, the Tribunal had no requirement to consider if it was reasonable to grant an Order.

### **Findings of the Tribunal.**

12. From the Application and the CMD, the Tribunal found the following facts to be established: -
  - i) There is a short assured tenancy agreement between the Parties;
  - ii) A competent notice to quit and notice in terms of Section 33 of the Act were served on the Respondent bringing the tenancy to an end on 11 May 2020;
  - iii) Tacit relocation is not operating;
  - iv) Notice to the North Lanarkshire Council, being the relevant local authority, in terms of Section 11 of the Homelessness (Scotland) Act 2003, has been given.

### **Decision of the Tribunal and Reasons for the Decision.**

13. The Tribunal had regard to the terms of Section 33 of the Act which were in effect before 7 April 2020 and which set out the steps which a landlord must take to bring an application for termination of a short assured tenancy to an end and determined that the Applicant had complied with these requirements.
14. Accordingly, having been satisfied that the Applicant had complied with these requirements, the Tribunal was obliged to grant an order.

15. The Tribunal then had regard to Rule 17(4) of the Rules which states that the Tribunal “may do anything at a case management discussion .....including making a decision” and so proceeded to make an order for possession to come into effect no sooner than thirty days from the date hereof, being 1 November 2020.

Note.

The Applicant’s Agents submitted authorities in respect of the doctrine of tacit relocation and the mandatory nature of Section 33 of the Act which were not received by the Tribunal until after the CMD. However, these authorities would have not have altered on the Tribunal’s decision.

### **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.**

**K. M**

**Legal Member/Chair**

**16 October 2020**  
**Date**