

**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/20/2108**

**Re: Property at 8 Hunter Avenue, Ardrossan, Ayrshire, KA22 8BB (“the Property”)**

**Parties:**

**Mr David Langan, 48 Ardrossan Road, Saltcoats, Ayrshire, KA21 5BW (“the Applicant”)**

**Ms Tracy Mullin, 8 Hunter Avenue, Ardrossan, Ayrshire, KA22 8BB (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

**Decision**

**1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the respondent’s eviction from the property be granted on the basis that the short assured tenancy has expired.**

1. This was a case management discussion ‘CMD’ in connection with an application in terms of s33 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’ for eviction on the expiry of a short assured tenancy.

2. The applicant and respondent both attended. The respondent’s partner also attended for support.

3. The tribunal had before it the following copy documents:

- Application dated 30 September 2020.
- Land certificate.
- Short assured tenancy agreement.
- AT5.
- S33 notice.
- Notice to quit.
- S11 notice.
- Email from applicant to the chamber dated 11 February 2021.
- Letter from the joint owner confirming her agreement to the applicant acting on her behalf dated 12 January 2020.

### **Preliminary matters.**

4. The tribunal noted that the in house convenor had written to the applicant on 29 December 2020 seeking proof of service of the s33 notice and notice to quit. The applicant responded by stating that the documents were sent to the respondent by recorded delivery post in March 2019 but he no longer had the recorded delivery receipt. The applicant lodged an email from the respondent's partner dated 11 February 2021 which stated that he and Ms Mullin received the notices in April 2019. Mr Mullin was not however the tenant.
5. The tribunal noted that the s11 notice lodged was incorrect as the wrong housing legislation had been selected.

### **Discussion**

6. Ms Mullin stated that she was not opposed to the eviction application. This was on the basis that she wanted to be rehoused by the local authority and they had told her that this would not happen until the eviction was granted. Ms Mullin gave oral evidence that she received the notice to quit and s33 notice by recorded delivery around the beginning of April 2019. She took this documentation to the council and has been waiting to be rehoused since then. Mr Langan undertook to send a fresh s11 notice to the council. The tribunal adjourned for a short time for this to be done. The tribunal had sight of the fresh s11 notice and the covering email during the adjournment.

### **7. Findings in fact**

- The applicant is the joint owner of the property.
- The parties entered into a short assured tenancy on 30 September 2015 for let of the property for the initial period of 6 months from 30 September 2015 and month to month thereafter.
- The applicant's served a valid notice to quit and s33 notice on the respondent on 29 March 2019.
- The short assured tenancy has reached its end.
- Tacit relocation is not operating.

## **Reasons**

8. This was an undefended eviction application. The notices pre date the changes introduced by the Coronavirus (Scotland) Act 2020 and that Act does not therefore apply. The eviction is mandatory if the notices are valid and have been properly served. Given the oral evidence of the respondent the tribunal accepted that the notice to quit and s33 notice had been received despite the lack of a recorded delivery receipt. The tribunal accordingly granted the order sought.

## **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.**

**Lesley Ward**

**9 April 2021**

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**Lesley A Ward Legal Member**

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**Date**