



**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/21/0283

Property: 63 Highfield, Forbeshill, Forres IV36 1FN ("Property")

Parties:

**Niall Hamilton, as Executor on the estate of the late Morag Stevenson Hamilton, 122
Woodstock Avenue, Shawlands, Glasgow G41 3QY ("Applicant")**

**Cluny Estate Agents, 91 High Street, Forres IV 36 1AA ("Applicant's
Representative")**

**Amanda Larcombe and Murray McLennan, 63 Highfield, Forbeshill, Forres IV36 1FN
("Respondents")**

Tribunal Members:

Joan Devine (Legal Member)

Tony Cain (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber)
("Tribunal") determined that an order for possession of the Property should be
made.**

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Short Assured Tenancy Agreement signed by the Applicant's Representative and the Respondents dated 22 May 2015 which incorporated a notice signed by the Applicant's Representative and the Respondents under section 32 of the Housing (Scotland) Act 1988 ("1988 Act") dated 22 May 2015 ("AT5"); Notice to Quit and Notice in terms of section 33 of the 1988 Act both dated 29 June 2020 addressed to each of the Respondents; post office receipt evidencing delivery on 1 July 2020; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 3 February 2021. There was also produced a statement of account regarding rent due for the Property for the period 25 March 2015 to 3 February 2021

and Confirmation docketed by the Sheriff Clerk at Glasgow on 15 June 2021 in respect of the estate of the late Morag Stevenson Hamilton.

Case Management Discussion ("CMD") on 2 June 2021

A CMD took place on 2 June 2021. The Applicant's Representative told the Tribunal that the Applicant had entered into the tenancy agreement under a Power of Attorney granted by his late mother, Morag Stevenson. The Tribunal noted that title to the Property was in the name of Colin McDonald Hamilton and Morag Hamilton. The Tribunal continued the CMD for further information to be produced regarding :

1. In what capacity the Applicant sought the order.
2. If the Applicant was acting as executor, whether the application should be amended.
3. Clarification of who holds title to the Property.

CMD on 15 July 2021

A further CMD took place by conference on 15 July 2021. In advance of the CMD the Applicant's Representative provided to the Tribunal copy certificate of registration of Power of Attorney dated 4 November 2010 by Morag Stevenson Hamilton in favour of Niall McDonald Hamilton and Kirsten Rina Hamilton and email from Kirsten Berezanskij stating that she consented to the Applicant continuing with this application. The Applicant's Representative advised that Colin McDonald Hamilton had died on 12 October 2005.

The rent statement produced showed arrears of rent as at 28 January 2021 of £11,350. The Confirmation narrated that Morag Stevenson Hamilton had died on 23 December 2018. Her executors were the Applicant and Kirsten Berezanskij.

At the CMD the Applicant was represented by Rebecca Garner of the Applicant's Representative. The Respondents were both in attendance. The Tribunal asked why an order for possession was sought by the Applicant. Ms Garner said that the Applicant wished to sell the Property with vacant possession in order to wind up his Mother's estate. She explained that Mrs Hamilton had died on 23 December 2018. When asked about the rent arrears Ms Garner said that further rent had fallen due since January 2021 and the Respondents had made payments towards that of £2600. The arrears now stood at £12,350.

Mr McLennan told the Tribunal that he lived in the Property with Ms Larcombe and their two children aged 5 and 8. He agreed that the arrears were now £12,350. He said that he and Ms Larcombe had spoken to the Council who had said they would provide emergency accommodation as long as the Respondents had entered a

payment plan regarding the rent arrears. The accommodation could be anywhere in Moray. Mr McLennan told the Tribunal that the Respondents could not afford private rented accommodation. He explained that he is a self employed heating engineer. He said he had little work for the past 6 weeks although things were now picking up. The tribunal asked Mr McLennan if he wished to remain in the Property. He said that he did not as he and Ms Larcombe could not afford it.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondents had entered into a tenancy agreement dated 22 May 2015.
2. The tenancy agreement incorporated a form AT5 signed on behalf of the Applicant and by the Respondents on 22 May 2015.
3. The tenancy was for the period 22 May 2015 to 22 November 2015 and unless terminated would continue thereafter on a month to month basis.
4. A Notice to Quit dated 29 June 2020 was served on the Respondents on 1 July 2020 stating that the tenancy would terminate on 22 January 2021.
5. A Notice in terms of Section 33 of the 1988 Act dated 29 June 2020 was served on the Respondents on 1 July 2020 stating that possession of the property was required on expiry of 6 months from the date of the Notice.
6. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 3 February 2021.
7. The Applicant held power of attorney from the proprietor of the Property on the date on which the tenancy agreement was entered into.
8. At the date this Application was made, the Applicant was executor on the estate of the proprietor of the Property.
9. The joint executor, Kirsten Berezanskij, had consented to the Application proceeding.
10. As at 28 January 2021 rent totalling £11,350 was due in terms of the tenancy agreement.

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 Tribunal noted that the tenancy had been properly

created as a short assured tenancy. The Tribunal noted that a Section 33 Notice had been served on the Respondent giving more than six months' notice that the Applicant required possession of the Property. The Tribunal noted that there was rent outstanding at the date of service of the Notice to Quit and the Section 33 Notice and at the date of the Hearing. The Tribunal noted that the Respondents did not wish to remain in the Property and that it was reasonable for the Applicant to wish to wind up the estate of his late Mother. In the circumstances the Tribunal determined that it was reasonable to make an order for eviction.

Decision

The Tribunal grants an Order for possession of the Property.

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.

Joan Devine

Legal Member

Date: 15 July 2021