

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**

Chamber Ref: FTS/HPC/EV/21/1996

Re: Property at 7 Machrie Street, Motherwell, ML1 3PJ (“the Property”)

Parties:

Mr David Maxwell, Mrs Claire Maxwell, 12 Old Mill Road, Bothwell, G71 8AY (“the Applicants”)

Mr David Corbett, 7 Machrie Street, Motherwell, ML1 3PJ (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants are entitled to the order sought for recovery of possession of the property.

Background

The Applicants submitted an application seeking an order to evict the Respondent from the property at 7 Machrie Street, Motherwell. The Tribunal intimated the application to the parties by letter of 29 September 2021 and advised them of the date, time and conference call details of today’s case management discussion. In that letter, the parties were also told that they required to take part in the case management discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to make written representations by 20 October 2021. No written representations were received by the Tribunal.

The Case Management Discussion

The First Applicant participated in the case management discussion and represented both Applicants. The discussion proceeded in the absence of the Respondent. The First Applicant advised the Tribunal that he and his wife decided at the end of 2019 that they no longer wished to be landlords and they served a notice on the Respondent in January 2020. The Applicants' realised that the notice served was defective. They served a further notice on the Respondent in November 2020. The Respondent has therefore been aware of the Applicants' intentions to recover possession of the property for some considerable time. There have been issues with the Respondent failing to pay the full rent due and the Respondent is currently in arrears of rent. That however, is not the ground upon which eviction has been sought. The Applicants seek to rely upon Section 33 of the Housing (Scotland) Act 1988. The Applicants' position is that the conditions set out in Section 33 of the Act have been met and the short assured tenancy terminated at the ish. It was submitted that in all the circumstances, it was reasonable to grant the order for eviction.

Findings in Fact:

1. The Applicant and the Respondents entered into a Tenancy Agreement dated 21 June 2012. The period of the tenancy was from 21 June 2012 to 22 December 2012. Thereafter, the tenancy continued on a monthly basis.
2. The Applicants served notice dated 17 November 2020 by recorded delivery in terms of Section 33 of the Housing (Scotland) Act 1988 indicating that the Applicants required possession of the property on or before 22 May 2021.
3. The Applicants served a Notice to Quit dated 17 November 2020 indicating that the Respondent should remove from the property by 22 May 2021.
4. The short assured tenancy had reached its ish.
5. Tacit relocation was not operating.
6. No further contractual tenancy is in operation.

Reason for Decision

The Tribunal proceeded on the basis of the written documents which were before it. The First Applicant invited the Tribunal to make the Order sought and submitted that it was reasonable to do so. The Applicants relied upon Section 33 of the Act. The notice had been properly served. The Tribunal was satisfied that conditions of Section 33 had been met and that it was reasonable in the circumstances to grant the order. There was nothing before the Tribunal challenging or disputing any of the evidence before it.

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.

Nicola Irvine


Legal Member/Chair

2 November 2021
Date