



**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/21/1998**

**Re: Property at 124 Stewarton Street, Wishaw, ML2 8AG (“the Property”)**

**Parties:**

**Ms Alicia Main, 46 Buchan Street, Wishaw, ML2 7HU (“the Applicant”)**

**Mr John Anderson, Unknown, Unknown (“the Respondent”)**

**Tribunal Members:**

**Andrew Upton (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicant**

1. This Application called for its Case Management Discussion by teleconference call on 19 January 2022, together with the related application EV/21/1997. The Applicant was represented by Mrs Hogg, solicitor. The Respondent was neither present nor represented on the call.
2. Previous attempts to serve the Application on the Respondent had been unsuccessful. As such, service of the Application and details of the CMD were made by website advertisement. At the beginning of the CMD, the Tribunal asked Mrs Hogg to explain the Applicant’s understanding of the Respondent’s continued possession. Mrs Hogg advised that the Applicant had taped a notice to the door of the property stating that it had been suggested that the Respondent had vacated the property and calling upon the Respondent, if that were not the case, to contact her. She also applied tape across the lock on the door and over the door seals. She received no contact from the Respondent. When she returned to the property a week later, the tape had been broken, indicating that access had been taken to the property. That access could only have been by the Respondent or someone acting on his

behalf or with his authority. Mrs Hogg also advised that the Applicant had made her own enquiries with neighbours who told her that they had not seen the Respondent for some time, but that unknown persons had been seen entering the property on a frequent basis. Against that background, the Applicant's position was that the Respondent remained in possession of the property but was no longer residing there, and that the Applications required to proceed. The Tribunal accepted that submission.

3. In this Application, the Applicant seeks an eviction order under section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). She says that the contractual tenancy came to an end at its ish on 20 April 2021 by virtue of an expired Notice to Quit in the prescribed form dated 9 October 2020. Tacit relocation is not in operation. Notice in terms of section 33(1)(d) was served on the Respondent.
4. Mrs Hogg invited the Tribunal to grant the order sought in this Application. She submitted that the requirements of section 33 of the 1988 Act were satisfied, and that it was reasonable to grant the order. The Respondent lives alone at the property. He has no known dependants. He has no known disabilities, and the property has not been adapted for his use. The Applicant is unaware of any specialist services that the Respondent accesses locally. Rent arrears continue to accrue. There is evidence of anti-social behaviour being undertaken from the property. That anti-social behaviour, in addition to being a nuisance to neighbours, puts the Applicant at risk of enforcement action from the local authority. The property is at risk of dilapidation due to the Respondent's failure to meet his contractual obligations. In all of the circumstances, Mrs Hogg submitted that the balance of reasonableness favoured granting an order for possession.
5. In terms of Rule 2 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017, the Tribunal is required when making a decision to have regard to the overriding objective to deal with proceedings justly, including by avoiding unnecessary delay. In terms of Rule 17(4), the Tribunal may do anything at a CMD that it may do at a Hearing, including making a final decision in the case.
6. The Respondent has been properly served with a copy of these proceedings by advertisement on the Tribunal website in accordance with the Rules of Procedure. He has failed to attend at the CMD to dispute the assertions made by the Applicant in the Application. The Tribunal accordingly considers that it has received sufficient unchallenged evidence and submissions to determine this case without a Hearing.
7. In terms of the Housing (Scotland) Act 1988:-  
"33.— *Recovery of possession on termination of a short assured tenancy.*  
(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

- (a) that the short assured tenancy has reached its ish;
  - (b) that tacit relocation is not operating; [...]
  - (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house; and
  - (e) that it is reasonable to make an order for possession.
- (2) The period of notice to be given under subsection (1)(d) above shall be—
- (i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;
  - (ii) in any other case, six months.
- (3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.
- (4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that ish shall end (without further notice) on the day on which the order takes effect.
- (5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”
8. Having considered the Application and supporting material, and heard the submissions of the Applicant’s representative, the Tribunal is satisfied that the requirements of section 33(1)(a), (b) and (d) of the 1988 Act are satisfied. The only question remaining for the Tribunal is whether it is reasonable to grant the order for the purposes of section 33(1)(e).
9. The Tribunal is required to have regard to all circumstances associated with the case. Having heard from the Applicant’s Representative, the Tribunal is satisfied that there is no special circumstance which ties the Respondent to the property. It is clear that the Applicant is likely to suffer financial loss, property damage and continued risk of regulatory enforcement if an order for possession is not granted. For those reasons, the Tribunal is satisfied that it is reasonable to grant the eviction order.

## **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.**

A. Upton

19 January 2022

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**Legal Member/Chair**

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**Date**