



**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/21/2062**

**Re: Property at Flat 0/2, 24 Cathcart Road, Rutherglen, Glasgow, G73 2QZ (“the Property”)**

**Parties:**

**Mr David Dumayne, 60 Nasmyth Avenue, Baljaffray, Bearsden, Glasgow, G61 4SQ (“the Applicant”)**

**Mr Paul O'Neill, Flat 0/2, 24 Cathcart Road, Rutherglen, Glasgow, G73 2QZ (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mr A Lamont (Ordinary Member)**

**Decision**

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

**Background**

1. This is an application received in the period from 25<sup>th</sup> August to 16<sup>th</sup> September 2021, made in terms of Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) seeking an order for possession. The Applicant’s representative included with the application a copy of the short assured tenancy agreement between the parties, which tenancy commenced on 5<sup>th</sup> January 2013 at a monthly rent of £525, copy Section 11 Notice with notification of service on the local authority, copy Notice to Quit and Section 33 Notice dated 2<sup>nd</sup> and served on 4<sup>th</sup> February 2021, requiring the Respondent to quit the Property by 5<sup>th</sup> August 2021, together with notification of service.

## **Case Management Discussion**

2. A Case Management Discussion (“CMD”) took place by telephone conference on 25<sup>th</sup> November 2021. The Applicant was not in attendance and was represented by Miss Alison Turner of Mac Flats Ltd. The Respondent was in attendance and was supported by Ms Lisa Dickinson.
3. Miss Turner said the Applicant was seeking an order for possession of the Property. The contractual tenancy has ended and the Applicant is no longer in a financial position to be a landlord.
4. The Tribunal explained that, unless there is any challenge to the Notice to Quit and Section 33 Notice, which appear to be in order, the Tribunal will move to consider reasonableness in granting the order.
5. The Respondent said there was no challenge to the notices served. He is keen to leave the Property as soon as possible. He and his family are being assisted by the local authority. They have now been allocated a local authority property but the date on which it will be ready to move into has been changed twice and is now given as 3<sup>rd</sup> December 2021. He is packed and ready to move.
6. The Tribunal adjourned to consider its decision. The Tribunal decided it was reasonable in all the circumstances to grant the order sought.

## **Findings in Fact and Law**

7.
  - (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 5<sup>th</sup> January 2013.
  - (ii) Notice to Quit and Section 33 Notice dated 2<sup>nd</sup> February 2021, requiring the Respondent to quit the Property by 5<sup>th</sup> August 2021 were served on the Respondent on 4<sup>h</sup> January 2020.
  - (iii) The short assured tenancy has reached its ish date.
  - (iv) The contractual tenancy terminated on 5<sup>th</sup> August 2021.
  - (v) Tacit relocation is not in operation.
  - (vi) The Applicant has given the Respondent notice that he requires possession of the Property.
  - (vii) It is reasonable to grant the order for possession.

## Reasons for Decision

8. Section 33 of the Act provides that the Tribunal may make an order for possession if satisfied that the short assured tenancy has reached its finish, tacit relocation is not operating, the landlord has given notice to the tenant that he requires possession, and it is reasonable to make the order. The contractual tenancy has been terminated and tacit relocation is not in operation. The Applicant has given the Respondent notice that he requires possession of the Property. The Respondent has secured alternative accommodation and is keen to leave the Property. In all the circumstances, it is reasonable to grant the order sought.

## Decision

9. An order for possession of the Property is granted in favour of the Applicant under section 33 of the Housing (Scotland) Act 1988. The order cannot be executed prior to 12 noon on 27<sup>th</sup> December 2021

## 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.**

# H Forbes

Legal Member/Chair

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25<sup>th</sup> November 2021  
Date