



**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/21/2118**

**Re: Property at 78 Seagrove Street, Carntyne, Glasgow, G32 6EL (“the  
Property”)**

**Parties:**

**Mr Adrian Muir as Executor of the late Mr Roderick Muir, Flat 2/1, 279 Clarkston  
Road, Muirend, Glasgow, G44 3DT (“the Applicant”)**

**Ms Christina Scott, Ms Nicola Scott, Address Unknown, Address Unknown  
 (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Jane Heppenstall (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order for possession be granted against the  
Respondents**

**Introduction**

This is an application under Rule 66 and Section 33 of the Housing (Scotland) Act 1988. The applicant seeks recovery of possession of the property previously let on a short assured tenancy.

Service of the papers upon the respondents by Sheriff Officer delivery was unsuccessful. Service by Advertisement under Rule 6A appeared on the Chamber website with effect from 29 October 2021.

A Case Management Discussion (CMD) took place by teleconference at 10.00 am on 7 December 2021.

The applicant is Mr Adrian Muir as executor of the late Mr Roderick Muir. He was represented by Ms Nicola Caldwell of Messrs T C Young Solicitors. The respondents, Ms Christina Scott and Ms Nicola Scott failed to participate in the teleconference hearing.

### FINDINGS AND REASONS

The property is 78 Seagrove Street, Carntyne, Glasgow G32 6EL.

The late Mr Roderick Muir is the heritable proprietor of the property. He entered into a short assured tenancy with Ms Christina Scott and Ms Nicola Scott who are the respondents. The tenancy commenced on 18 August 2014 for an initial period to terminate on 1 March 2015 with rent stipulated at a rate of £525 per calendar month.

The said Mr Roderick Muir died on 16 February 2018. Mr Adrian Muir, the applicant, is brother and the executor of the late Mr Roderick Muir. This is evidenced by the Confirmation appointing Mr Adrian Muir as executor of the late Mr Roderick Muir. The applicant has title and interest to bring the current application.

The current application is not the first made by the applicant to seek to terminate the tenancy. A former application was made under reference EV/19/3509. That former application was dismissed because the Notice to Quit was found to be invalid as it did not nominate an 'ish' date by which the tenancy should end. The Tribunal previously issued a determination dated 28 November 2019 in that former process finding that the tenancy agreement, not having been brought to an end as at 1 March 2015, continued on the legal presumption of tacit relocation for a further period of the same duration as the original lease, which was for a period of 196 days.

This application is accompanied by a Notice to Quit which sought to bring the tenancy to an end as at 19 January 2021, calculated to be an 'ish' date based upon consecutive periods of 196 days. A Sheriff Officer's execution has been produced which certifies that upon 1 December 2020 the Notice to Quit and Section 33 Notice in Form AT6, was served upon both respondents. Evidence of a corresponding Section 11 Notice issued to the relevant local authority has also been produced. More than the minimum period of 4 weeks was provided to the Respondents to bring the tenancy to an end in the Notice to Quit and the s33 Notice provided the required 6 month notice period prior to the raising of proceedings before the Tribunal. The notice periods required to bring tenancies to an end were extended as a consequence of the provision of the Coronavirus (Scotland) Act 2020.

The short assured tenancy reached its 'ish' as at 19<sup>th</sup> January 2021. The tenancy was brought to an end. Tacit relocation is not operating. No further contractual tenancy is in existence.

The respondents have failed to communicate with the applicant. They have failed to vacate the premises or at least have failed to return the keys and intimated their departure to the applicant. The respondent's had placed at notice on the door of the property in advance of 18 March advising that they were leaving as at that date but this has not been confirmed. The respondents have not made any rental payments since the death of Mr Roderick Muir on 16 February 2018.

The applicant seeks to recover possession of the property with the intention to sell the property in order to wind up his late brother's estate. He was previously provided with a temporary landlord registration number and in July 2021 was advised that his application was on hold. The applicant has encountered difficulties due to being unable to gain access to the property to carry out the necessary landlord safety checks, including gas safety, electrical safety, PAT testing, fire, smoke and heat detection, energy performance and legionella risk assessment.

The applicant in this case has required to await a significant period of time to seek possession of the property notwithstanding that no rental payments have been made. Little is known about the personal circumstances and profile of the respondents. It would not be reasonable to delay proceedings further to require the applicant to obtain further details regarding them. The Tribunal was satisfied that the respondents have had fair notice of these intended proceedings and of the application and CMD hearing and they have failed to participate. No opposition is offered to the application. The Tribunal balanced the interests of both parties and found that it was reasonable to grant an order for possession and that a further hearing was not required. The applicant is entitled to vacant 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.**

**Richard Mill**

**7 December 2021**

**Legal Member/Chair**

**Date**