

**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/22/0601

Property: 249 Cedar Road, Abronhill, Cumbernauld G67 1ND ("Property")

Parties:

**Jason Kennedy. 55 Etive Crescent, Condorrat, Cumbernauld G67 4JB
("Applicant")**

**K Property, 12 Ettrick Square, Cumbernauld G67 1ND ("Applicant's
Representative")**

Brian Hainan, 249 Cedar Road, Abronhill, Cumbernauld G67 1ND ("Respondent")

Tribunal Members:

Joan Devine (Legal Member)

Leslie Forrest (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 dated 29 and 30 June 2017; AT5 addressed to the Respondent dated 29 June 2017; Notice to Quit dated 23 June 2021 addressed to the Respondent; Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("1988 Act") dated 23 June 2021 addressed to the Respondent; letter from the Applicant's Representative to the Respondent dated 23 June 2021; Royal Mail proof of delivery dated 3 July 2021; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering letter dated 8 November 2021; certificate of posting dated 12 November 2021 and certificate of service by Sheriff Officer evidencing service of the Application on the Respondent on 1 April 2022.

Case Management Discussion (“CMD”)

A CMD took place on 19 May 2022 at 2pm by conference call. In attendance for the Applicant was Donna Cramb of the Applicant’s Representative. There was no attendance by the Respondent.

The Tribunal asked Mrs Cramb to confirm the date of delivery of the notice to quit and section 33 notice. She said they were delivered on 3 July 2021 as shown on the royal mail proof of delivery.

The Tribunal asked about the period of notice in each notice as it was less than 6 months, possession being requested on 30 September 2021. She explained that the Applicant wished to move back into the Property and she understood the relevant notice period was 3 months. The Tribunal noted that the notices served did not rely on that ground for eviction. 6 months notice was required to be given in a section 33 notice in terms of the Coronavirus (Scotland) Act 2020 schedule 1 para 4(3). The Tribunal referred Mrs Cramb to schedule 1 paragraph 10 of the 2020 Act which provides where a notice does not take proper account of paragraphs 1 to 9 of the schedule the error does not invalidate the notice but the notice may not be relied upon for the purposes of seeking an order for possession until the date on which it could have been relied upon had it been correctly completed. In this case the S.33 notice could not be relied upon until 3 January 2022. The Application was dated 1 March 2022 which meant that the notices served could be relied upon.

The Tribunal asked Mrs Cramb to comment on the reasonableness of granting an order for eviction. She said that the Respondent had failed to pay the rent for the past 10 months. She said that the Applicant had been “living on a sofa” for the past 10 months and wanted to move back into the Property. She thought the Applicant may have gone through a break up. She said that the Respondent had contacted her on 18 May 2022 and said that he was moving into a new property. He said that he had collected the keys last week. She said that the Respondent lived in the Property alone. She said that he was in employment and not in receipt of any benefits that were being paid towards the rent.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement dated 29 and 30 June 2017.
2. The tenancy was for the period 30 June to 30 December 2017 and month to month thereafter.

3. A Notice to Quit dated 23 June 2021 was served on the Respondent on 3 July 2021 stating that the tenancy would terminate on 30 September 2021.
4. A Notice in terms of Section 33 of the 1988 Act dated 23 June 2021 was served on the Respondents on 3 July 2021 stating that possession of the property was required on 30 September 2021.
5. The Section 33 notice was not relied upon for the purposes of seeking an order for possession of the Property until 1 March 2022.
6. The tenancy had reached its end, tacit relocation was not operating and no further contractual tenancy was in existence.
7. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.

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 and Notice to Quit had been served on the Respondent. Although less than six months' notice had been given to the Respondent that the Applicant required possession of the Property, the Applicant had not sought to rely on the notice until more than 6 months after the notice had been served. Having considered all of the circumstances, the Tribunal determined that it was reasonable to issue an order for possession of the Property.

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

J. D ^{J.D}

J. D

Legal Member

Date : 19 May 2022