

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 18(1) of the Housing  
(Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/22/3085**

**Re: Property at 9 Ladeside Gardens, Kilbirnie, Ayrshire, KA25 7EA (“the  
Property”)**

**Parties:**

**Intye Properties Ltd, Logistae House, 45 Preston New Road, Blackburn, BB2  
6AE (“the Applicant”)**

**Mrs Jacqueline Bowen, Mr Kirk Anthony Bowen, 9 Ladeside Court, Kilbirnie,  
North Ayrshire, KA25 6HE (“the Respondents”)**

**Tribunal Members:**

**Alastair Houston (Legal Member) and Angus Lamont (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 recovery of possession be made in  
favour of the Applicant.**

**1. Background**

1.1 The is an application for an order for recovery of possession in respect of a property let on a short assured tenancy. The application was accompanied by copies of the written tenancy contract between the parties, notice to quit and notice in terms of section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”).

1.2 A request for a postponement of the Case Management Discussion had been submitted on behalf of the Respondents on 10 January 2022, the reason being the unavailability of the Respondents’ representative who had previously confirmed that he was to represent them. This was refused given the proximity to the Case Management Discussion, the

relatively straight forward nature of the application and lack of information as to why the Respondents could not attend themselves and the lack of written representations. The Respondents were invited to submit such written representations by close of business on 16 January 2023.

- 1.3 On 16 January 2023, representations were received from the Respondents' representative to the extent that it was confirmed that the Respondents would not be attending the Case Management Discussion, that they consented to the order sought being granted and were seeking assistance with rehousing from the local authority, with an application having been submitted and temporary accommodation to be provided if needed.

## **2. The Case Management Discussion**

2.1 The Case Management Discussion took place on 17 January 2023 by teleconference. The Applicant was represented by Miss Donnelly, solicitor. The Respondent was neither present nor represented. Given the representations lodged, the Tribunal proceeded in the Respondent's absence as permitted by the Chamber Rules.

2.2 Miss Donnelly submitted that the order sought should be granted. Notwithstanding the representations lodged on behalf of the Respondent, the Tribunal considered it was still required to consider the reasonableness of granting the order. Miss Donnelly confirmed that the Applicant was a commercial entity divesting of its property portfolio. The property was its last remaining property, being a four bedroom house. It was currently being let to the Respondents at a rental under the market rate and was no longer commercially viable. An earlier attempt to increase the rent was unsuccessful due to the requisite documentation not being completed correctly. The Respondents were believed to reside with children, who may be grandchildren in respect of whom they had custody. Miss Donnelly was not able to confirm their ages. The First Respondent was believed to be unemployed and the Second Respondent in part time employment. The Respondents had first sought advice from the local authority in June 2022. Rent was paid to the Applicant directly from the Respondents and they were not believed to be in receipt of state benefits. Rent was up to date and the Respondents were otherwise tenants of good standing.

2.3 Following a short adjournment to consider the matter, the Tribunal granted the order sought with an delay in execution of the order until 17 March 2023.

## **3. Reasons For Decision**

3.1 Section 33 of the 1988 Act is in the following terms:-

*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 finish;*

*(b) that tacit relocation is not operating;*

*(c) . . . . .*

*(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.*

A valid notice to quit and notice in terms of section 33 of the 1988 Act had been served. The 1988 Act does not specify any specific factors the Tribunal is required to attach particular weight to when assessing reasonableness. Accordingly, the Tribunal considered the circumstances of the parties and application as a whole.

3.2 Given the application was not opposed, the Tribunal was minded to grant the order sought. The Tribunal also considered that, as there were likely children residing at the property, a delay in execution as permitted by rule 16A of the Chamber Rules was appropriate. Section 32 of the Housing (Scotland) Act 1987 imposed duties upon local authorities to those threatened with homelessness, that is, likely to become homeless within the next two months. It was within the Tribunal's knowledge that local authorities, when assisting those threatened with homelessness, often only sought to secure permanent accommodation for such persons if a firm date within the next two months was set when they required to leave a property. Accordingly, the delay in execution ought to allow sufficient time for the local authority to perform their duties and reduce the need for a family with children requiring temporary accommodation.

3.3 Given the date of service of the notices and date of making the application, the provisions of the Cost Of Living (Tenant Protection) (Scotland) Act 2022 did not apply.

## **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.

Alastair Houston

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Legal Member/Chair

17 January 2023

\_\_\_\_\_  
Date