



**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/20/2143**

**Re: Property at 62 Clark Drive, Irvine, KA12 0LB (“the Property”)**

**Parties:**

**Mrs Linda Wright, C/o Lomond Property, 51 Main Street, Prestwick, KA9 1AD (“the Applicant”)**

**Mrs Yvonne Vernon, 62 Clark Drive, Irvine, KA12 0LB (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a possession order in terms of section 33 of the Housing ( Scotland) Act 1988 must be granted.**

**Background**

This is an application in terms of Rule 66 of the Tribunal rules of procedure. The Application was lodged with the Tribunal on 9 October 2020. The application was accepted by the Tribunal on 19 October 2020.

A case management discussion was fixed for 27 November 2020 at 10am. At that case management discussion the Applicant was represented by Mr Spence of Lomond Property. The Respondent attended the Case Management discussion and was represented by Mr Meek of CHAP( Community Housing Advocacy Project).

The Tribunal had sight of the application, Form AT5, a short assured tenancy document, a notice to quit, a Notice in terms of section 33 of the Housing ( Scotland ) Act 1988, an execution of service of these documents on the Respondent by Sheriff

Officer and a Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 together with email intimation of this notice on the local authority.

Mr Spence moved for a possession order in terms of the documentation served on the Respondent. Mr Meek on behalf of the Respondent indicated that there was no objection to the request for a possession order but requested that the Respondent be given as much information as possible as to the date of repossession.

The Tribunal examined the documentation submitted with the application and was satisfied that the terms of section 33 of the Housing (Scotland) Act 1988 had been met in that a notice to quit had been served which brought the tenancy to an end at an end date for the tenancy which had continued on a month to month basis after its initial term. This Notice to quit had been served timeously and was in the proper form. In addition a Notice in terms of Section 33 of the 1988 Act had been served on the Respondent by Sheriff Officer and this was also timeously served and gave notice of the requirement for possession of the property.

The Tribunal also considered whether this was a case in which the Coronavirus (Scotland) Act 2020 applied but noted that the notices served in this case predated the coming into force of this legislation and accordingly the terms of section 33 of the 1988 Act as they were enacted before 7<sup>th</sup> April 2020 applied to this application.

The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

The Tribunal made a possession order in terms of Section 33 of the Housing (Scotland) Act 1988.

Before the case management discussion concluded the Tribunal set out the timescale for receipt of its decision, statement of reasons and the Order of the tribunal. The Tribunal also referred to the normal timescale for the charge for removing procedure. It was agreed by parties that given the timescales required the actual repossession would not be able to take place before January 2021. Mr Spence on behalf of the Applicant indicated that he would be in a position to let Mr Meek, the Respondent's representative know when the Tribunal's order for possession was received by the Applicant, at the expiry of a 30 day period after the decision was sent to parties, ie after the expiry of the period during which permission to appeal can be requested.

## **Findings in Fact**

1. The parties entered into a short assured tenancy agreement at the property with effect from 29 September 2017. The tenancy agreement was signed by parties on 25 September 2017.
2. Form AT5 was signed for by the Respondent on 25 September 2017.
3. At the end of the term of the tenancy it continued on a month to month basis as set out in the tenancy agreement.
4. A Notice to quit in proper form was served by Sheriff Officers on the Respondent on 28 February 2020 bringing the tenancy to an end with effect from 30 April 2020, a proper end date having regard to the terms of the tenancy which was continuing on a monthly basis at that stage.
5. Tacit relocation is not in operation, the tenancy between the parties having been brought to an end.
6. A Notice in terms of section 33 of the Housing (Scotland) Act 1988 was served on the Respondent on 28 February 2020 giving her notice that the property was required for possession and that she should leave the property on or before 1 May 2020.
7. A Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was served on the local authority in respect of this application on 9 October 2020.

## **Reasons for decision**

The Tribunal was satisfied that the requirements of section 33 of the Housing (Scotland) Act 1988 had been met and that a possession order required to be made. Notices in this case had been served prior to the coming into force of the Coronavirus (Scotland) Act 2020 therefore this was not an application in which the Tribunal had discretion, but given that the notices had been properly and timeously served on the Respondent and the tenancy had been brought to an end without tacit relocation operating, the requirements of the Act were met and the making of a possession order was mandatory.

## **Decision**

The Tribunal made a possession order in respect of the property in terms of section 33 of the Housing (Scotland) Act 1988.

## 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.

**Valerie Bremner**

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Legal Member/Chair

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Date

27.11.20