



**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/18/1583**

**Re: Property at 2A The Ward, Strathaven, ML10 6AS (“the Property”)**

**Parties:**

**Scottish Midland Co-operative Society Ltd, Hillwood House, 2 Harvest Drive,  
Newbridge, EH28 8QJ (“the Applicant”)**

**Mr Angela Kerr, Mr Stephen Linden, 2A The Ward, Strathaven, ML10 6AS (“the  
Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that (1) the order for eviction and possession be  
granted; and (2) the order for expenses under Rule 40 of the Procedure Rules  
be refused.**

**Background**

This case called for a Case Management Discussion (**CMD**) on 22 August 2018. The Applicant sought an order for eviction and possession under section 33 of the Housing (Scotland) Act 1988 and Rule 66 of the Procedure Rules. In addition to that the Applicant sought expenses for unreasonable conduct and behaviour in terms of Rule 40 of the Procedure Rules.

The Tribunal had regard to the following documents:

- (i) Application Form E received by the Tribunal on 25 June 2018;
- (ii) Tenancy Agreement between the parties dated 14 October 2016;
- (iii) AT5 dated 14 October 2016;

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- (iv) Notices to Quit to each Respondent dated 12 March 2018 specifying the date of removing as at 14 June 2018;
- (v) Section 33 Notices addressed to each Respondent dated 14 March 2018 specifying the date of possession as at 14 June 2018;
- (vi) Certificates of Service of the notices to Quit and Section 33 Notices by Sheriff Officers dated 21 March 2018; and
- (vii) Section 11 notices to South Lanarkshire Council in respect of both Respondents.

### **Case Management Discussion**

At the CMD there was no appearance from the Respondents. The Tribunal was satisfied that the papers including notification of the CMD has been served on the Respondents. Certificate of Service of the Tribunal papers and notification of the CMD had been served by Sheriff Officers on each Respondent on 26 July 2018.

The Tribunal was addressed by Ms McNiven who appeared as local agent for the Applicant. She invited the Tribunal to grant the eviction order sought and also to grant an order for expenses in terms of Rule 40 of the procedure Rules in respect of unreasonable conduct and behaviour by the Respondent.

The Tribunal enquired what the basis of the unreasonable conduct and behaviour was. Ms McNiven advised this was constituted by virtue of the Respondents' failure to remove from the Property and damage to the Property. She advised that it appeared the Respondents had vacated the Property.

### **Decision**

The Tribunal was satisfied that it had sufficient information upon which to make a Decision at this stage, that it was reasonable to do so and the procedure had been fair. The Tribunal accordingly granted the eviction order and order for possession sought. The Tenancy was a short assured tenancy which had been validly terminated and appropriate notices served. The Tribunal had no discretion other than to grant the order sought.

The Tribunal refused the application for expenses in terms of Rule 40. The Tribunal was not satisfied that the Respondents delaying vacating the Property or damage to the Property constituted unreasonable conduct or behaviour for the purposes of Rule 40. Rule 40 is concerned with conduct or behaviour of a party in a case which has put the other to unnecessary expense. The Respondents had not participated in the proceedings so could not possibly have put the Applicant to unnecessary expense. Such an application was misconceived.

### **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.**

Alan Strain

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**Legal Member/Chair**

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**Date**

*22 August 2018*