



**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/18/2312**

**Re: Property at 35 Nithsdale Crescent, Bearsden, Glasgow, G61 4HY (“the  
Property”)**

**Parties:**

**Mrs Oonagh Bryson, 56 Rosslyn Road, Glasgow, G61 4DN (“the Applicant”)**

**Ms Anna Maria Lupi, 35 Nithsdale Crescent, Bearsden, Glasgow, G61 4HY (“the  
Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member)**

**Representation:**

**Respondent – Mrs J White, Ian C McCarthy Solicitors, Glasgow**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that**

**BACKGROUND**

1. By lease dated 26 January 2014 the Applicant let the Property to the Respondent. A notice in terms of s33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) – commonly referred to as a form AT5 – was timeously served upon the Respondent. The tenancy was, therefore, a short assured tenancy in terms of the 1988 Act;
2. A notice to quit and a notice in terms of s33 of the 1988 Act each dated 19 June 2018, and each requiring possession of the Property on 26 August 2018 were served on the Respondent, by Sheriff Officer, on 21 June 2018;
3. A notice in terms of s11 of the Homelessness etc. (Scotland) Act 2003 had been intimated upon the relevant local authority;

4. The Respondent did not vacate the Property and an application was presented to the Tribunal for an order for eviction;

### **THE CASE MANAGEMENT DISCUSSION**

5. The Applicant attended the Case Management Discussion, supported by her husband. The Respondent did not attend. She was, however, legally represented;
6. Prior to the Case Management Discussion correspondence had been received by the Tribunal, from the Respondent's solicitor's office, advising:
  - a) The Respondent was wishing to apply for legal aid in relation to the proceedings,
  - b) It was not reasonable that decree of eviction be granted, certain family circumstances being cited,
  - c) The Applicant had failed to attend to various repairs required at the Property. The Tribunal took this also to be a factor to be considered in relation to the reasonableness of an order for eviction,
7. The Tribunal raised the issue of the proposed defence with the Respondent's solicitor. After allowing a short adjournment to enable the solicitor to review the case papers, which did not appear to have been provided to her by the Respondent, the solicitor intimated, quite properly in the view of the Tribunal, that, as a matter of law, there was no defence to the application. It was accepted that the Tribunal would require to grant the order sought;

### **FINDINGS IN FACT**

8. The Tribunal found the following facts to be established:-
  - i. By lease dated 26 January 2014 the Applicant let the Property to the Respondent. A notice in terms of s33 of the Housing (Scotland) Act 1988 was timeously served upon the Respondent.
  - ii. A notice to quit and a notice in terms of s33 of the 1988 Act each dated 19 June 2018, and each requiring possession of the Property on 26 August 2018 were served on the Respondent, by Sheriff Officer, on 21 June 2018;
  - iii. A notice in terms of s11 of the Homelessness etc. (Scotland) Act 2003 had been intimated upon the relevant local authority;

### **REASONS FOR DECISION**

9. Having regard to the nature of the tenancy, it being a short assured tenancy, and the fact that all necessary steps had been taken by the Applicant to end the tenancy and seek recovery of possession of the Property, as a matter of law, there was no defence to the application and, in the circumstances, the order sought required to be granted;
10. Discussion took place as to the date upon which the order would take effect. The Applicant, after discussion matters with the solicitor for the Respondent, agreed that the order for eviction could be granted on the basis that it would become effective at 12 noon on 4 March 2019. On the basis of the agreement between the Parties, the Tribunal granted an order in those terms;

## DECISION

The Tribunal grants order to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property at 35 Nithsdale Crescent, Bearsden, Glasgow, G61 4HY and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same. The order is not to be executed prior to 12 noon on 4 March 2019

## 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.

Virgil Crawford

11 January 2019

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Legal Member/Chair

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Date