

Housing and Property Chamber
First-tier Tribunal for Scotland



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/18/2403

Re: Property at 27 Burnbrae Road, Bonnyrigg, EH19 3EY ("the Property")

Parties:

Mrs Donna Ruth McKay, 1 Newton Cottages, Boggs Holdings, Pentcaitland, EH34 5BB ("the Applicant")

Mrs Stephanie Gairn or Marshall, 27 Burnbrae Road, Bonnyrigg, EH19 3EY ("the Respondent")

Tribunal Members:

Alastair Houston (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for possession of the property be made in favour of the Applicant.

1. Background

1.1 This is an application for an order for possession of a property upon termination of a Short Assured Tenancy. The application was accompanied by copies of the written tenancy agreement between the parties, notice to quit and notice in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"), Form AT5, Form AT6 and notice to the local authority of the application under Section 11 of the Homelessness etc (Scotland) Act 2003.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on the 11 October 2018. The application was heard along with the connected application reference FTS/HPC/CV/18/2405. The Applicant was represented by Mr McDonald

of Broughton Property Management. The Respondent was not present nor was she represented.

2.2 The Tribunal had been contacted shortly before the Case Management Discussion by a member of the casework team to advise that the Applicant had sent an email advising she would be unable to attend the Case Management Discussion due to car and health issues. Furthermore, she was authorising her sister-in-law, Sarah Johnston, to speak on her behalf. The Tribunal noted that Sheriff Officers had given notice of the Case Management Discussion to the Respondent in terms of the Chamber Rules. The Tribunal did not consider the communication by the Respondent to be a request for an adjournment or postponement in terms of Rule 28 or, alternatively, if it was such a request that good reason had been shown as to why an adjournment or postponement was necessary. The Tribunal considered it appropriate to proceed with the Case Management Discussion in the absence of the Respondent under Rule 29.

2.3 Mr McDonald confirmed that the application was insisted upon. The Tribunal noted that the Notice to Quit dated 8 January 2018 had been served on the Respondent by Sheriff Officers on 11 January 2018. It sought to terminate the tenancy agreement on 14 May 2018. The Tribunal noted that this was a valid *ish* date in terms of paragraph 2 of the written tenancy agreement, Mr McDonald having confirmed that the tenancy had tacitly relocated following the initial term.

2.4 The Applicant had also given notice to the Respondent in terms of Section 33 of the 1988 Act. The said notice was also served by Sheriff Officer on 11 January 2018. Accordingly, the required notice period of two months had been given.

3. Reasons For Decision

3.1 Under Section 33 of the 1988 Act, if the Tribunal is satisfied that the Short Assured Tenancy has reached its *ish*, that tacit relocation is not operating and that the landlord has given to the tenant notice stating that he requires possession of the house.

3.2 In the present case, the requirements of Section 33 of the 1988 Act had been satisfied and the Tribunal was required to make an order for possession in favour of the Applicants.

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

Legal Member/Chair

Date

12 November 2018