



**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/18/2708**

**Re: Property at 1 Station Rise, Lochwinnoch, PA12 4NA (“the Property”)**

**Parties:**

**The Church of Scotland General Trustees, 121 George Street, Edinburgh, EH2 4YR (“the Applicant”)**

**Ms Anne Rodgers, 1 Station Rise, Lochwinnoch, PA12 4NA (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (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 at 1 Station Rise Lochwinnoch PA12 4NA be made in terms of s33 of the Housing (Scotland) Act 1988.**

This is a case management discussion ‘CMD’ in connection with an application in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017, ‘the rules’ and s33 of the Housing (Scotland) Act 1988 for recovery of possession of the property at 1 Station Rise Lochwinnoch PA12 4NA. The application was made on behalf of the Church of Scotland General Trustees by Miss Susan Killean of the Church of Scotland law department on 10 October 2018. The tribunal had before it the following copy documents:

1. Application dated 9 October 2018 and received by the Tribunal on 10 October 2018.
2. Short assured tenancy agreement for the property signed on 29 September 2017 for the period 29 September 2017 until 28 September 2018.

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3. AT5 dated 29 September 2017.
4. Notice to quit dated 20 July 2018.
5. S33 notice dated 20 July 2018.
6. Letter sent by applicant's agent to respondent dated 20 July 2018.
7. S11 homeless letter to local authority.
8. Royal mail proof of delivery dated 21 July 2018.
9. Land certificate for the property.
10. Letter sent by the Tribunal on 24 October 2018.
11. Letter sent to the Tribunal by Miss Killean dated 24 October 2018.

The tribunal had sight of the execution of service by sheriff officers of the application and CMD on the respondent dated 28 November 2018. Shortly before the CMD was due to start the Tribunal administration received an email from the respondent stating that she was unable to attend the CMD due to severe sciatica. She also stated that she "understands that it is likely the hearing will proceed in my absence". The respondent also states in her email " Whilst I am aware my tenancy ended on 28 September 2018 I would request that it be extended until June of this year". The respondent did not request an adjournment of the CMD in her email to enable her to attend personally on another date. The applicant's legal representative Miss Susan Killean attended the hearing.

### **Preliminary matter**

The tribunal noted that Miss Killean had lodged a copy of the letter she sent to the respondent on 20 July 2018 and a copy of the "proof of delivery " of the letter. The letter also contained the notice to quit and s33 notice. The tribunal wrote to Miss Killean on 24 October 2018 seeking clarification as the "proof of delivery" on 21 July 2018 was signed for by "Joe Patterson". Miss Killean responded on 24 October 2018 to advise the tribunal that the certificate of posting had been mislaid. The tribunal noted today that the copy letter of 20 July 2018 has a tracking number on it and this ties in with the tracking number on the proof of delivery lodged. Miss Killean stated to the tribunal today that it is her normal practice to peel off the tracking number from the recorded delivery slip before this goes to the staff for posting at the post office. This ensures that she has a tracking number in case the certificate of posting is mislaid. Miss Killean also went on to state that after her letter was sent on 20 July 2018 she received a telephone call from the respondent and she is satisfied that the respondent had received her letter of 20 July 2018 with the s33 notice and notice to quit. Miss Killean's submissions to the tribunal today were that the respondent made contact with her office around the end of July 2018 as a direct result of receiving the paper work containing the notice to quit and s33 notice. The respondent made an appointment to see Miss Killean in August 2018 but she failed to attend for her appointment. Miss Killean's submission to the tribunal today is that the respondent was sent a recorded delivery letter on 20 July 2018 and it is likely that one of her children, who is believed to be called Joseph, signed for the letter and the other documents.

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After hearing submissions on this point the tribunal was satisfied that a recorded delivery letter was sent by Miss Killean as legal representative for the applicants on 20 July 2018 and the tracking slip lodged relates to the recorded delivery letter sent. The tribunal is satisfied that the s33 notice and the notice to quit have been validly served on the respondent. Thereafter Miss Killean invited the tribunal to grant the order sought. The tribunal proceeded to hear the application in the absence of the respondent.

### **Findings in fact**

The tribunal finds in fact:

1. That the applicants are the owners of the property.
2. That the applicants entered into a short assured tenancy with the respondent on 29 September 2017 for the let of the property for the period 29 September 2017 until 28 September 2018.
3. That the applicant's agents served a valid notice to quit and s33 notice on the respondent on 20 July 2018.
4. That the short assured tenancy has reached its end.
5. That tacit relocation is not operating.
6. That no further contractual tenancy is for the time being in existence.
7. That the landlord has given the tenant notice that he requires possession of the property.
8. That the applicant has served the appropriate notice on the local authority in terms of s11 of the Homelessness etc (Scotland) Act 2003.

### **Reasons**

The tribunal granted the order sought in the absence of the respondent. The tribunal is satisfied that the respondent received appropriate notice of the application in terms of rule 24. The tribunal had sight of the sheriff officer's execution of service of the application and papers regarding the CMD which were served personally on the respondent on 28 November 2018. The tribunal proceeded with the application in terms of rule 29 in the absence of the respondent. The email sent by the respondent a few minutes before the CMD did not seek an adjournment of the CMD and it confirmed that the respondent was aware that the tenancy came to an end on 28 September 2018 as per the notice to quit and s33 notice.

The respondent's email makes reference to rent arrears. Miss Killean made submissions that the applications were let down by their letting agent and they were unsure whether the respondent had paid any rent from September 2017 until July 2018. She was however instructed that no rent had been paid since July 2018. This was however a side issue and the tribunal was satisfied that it had enough information before it to day to make a decision and the procedure had been fair. The

notice to quit and s33 notice were validly served at the ish and accordingly the tribunal granted the mandatory possession sought.

### **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.**

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**3 January 2019.**

**Lesley A Ward, Legal Member**

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**Date**