



**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/18/2952**

**Re: Property at 39 Island View, Ardrossan, Ayrshire, KA22 7PJ (“the Property”)**

**Parties:**

**Mr Frankie Nolan, Mrs Kirsty Nolan, 20 Sorbie Road, Ardrossan, Ayrshire,  
KA22 8AQ (“the Applicants”)**

**Miss Kristie Ann Nolan, 39 Island View, Ardrossan, Ayrshire, KA22 7PJ (“the  
Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

**Decision**

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

**Background**

This is an application dated 1<sup>st</sup> November 2018 brought in terms of Rule 66 (Application for order for possession upon termination of a short assured tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicants provided with their application copies of the short assured tenancy agreement, form AT5, Notice to Quit, Section 33 notice, and Section 11 notice.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied, save in respect of service of the section 33 notice.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 1<sup>st</sup> April 2019, and I was provided with the execution of service.

### **Case Management Discussion**

A Case Management Discussion was held on 17<sup>th</sup> April 2019 at Ardrossan Civic Centre, Glasgow Street, Ardrossan. The Second Applicant appeared, and was represented by Mrs Bell, solicitor. The First Applicant did not appear but was also represented by Mrs Bell. The Respondent appeared, but was not represented, and was accompanied by her sister Nikita Nolan.

The Tribunal had previously noted that the original notice to quit and section 33 notice provided with the application, both dated 10<sup>th</sup> August 2018, were not legally valid. These had been replaced by the Applicant with a fresh notice to quit and section 33 notice, both dated 23<sup>rd</sup> August 2018, which were legally valid but appeared to have been purportedly served on the Respondent by e-mail.

The Tribunal raised the question of whether this was a valid form of service for the section 33 notice in particular, standing the terms of section 54 of the *Housing (Scotland) Act 1988*.

Mrs Bell advised the Tribunal that she had concerns about the legal validity of the notices, and as a result, had prepared fresh notice to quit and section 33 notice, both dated 31<sup>st</sup> January 2019, and which were both personally served by sheriff officers on the Respondent on 31<sup>st</sup> January 2019. The notices gave a date to quit the Property by 1<sup>st</sup> April 2019, on which date the Applicant required vacant possession.

Mrs Bell provided copies of the notice to leave, section 33 notice and execution of service, all dated 31<sup>st</sup> January 2019, and the Respondent confirmed that she had been served with these.

The Tribunal considered these new documents, and concluded that they were valid notices which had been validly served. Albeit a little unusual to tender replacement notices and executions at this stage, the Tribunal also concluded that the Applicant could rely upon these at today's Case Management Discussion in this application.

Mrs Bell invited the Tribunal with reference to the application and papers to grant the order sought.

The Respondent explained that she was having difficulties in finding alternative accommodation for herself and her family, but was not in a position to oppose the granting of the order.

### **Statement of Reasons**

In terms of Section 33 of the *Housing (Scotland) Act 1988*, the Tribunal shall make an order for possession of the house let on the tenancy if:

- (a) the short assured tenancy has reached its ish;
- (b) tacit relocation is not operating; and
- (d) the landlord has given to the tenant notice stating that he requires possession of the house.

All of the above criteria have been satisfied in this application, and accordingly the Tribunal shall make an order for possession.

### **Decision**

In these circumstances, I will make an order for possession of the house let on the tenancy as sought in this application.

### **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.**

Mr Neil Kinnear

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**Legal Member/Chair**

17/04/19

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**Date**