



**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/18/3228

Re: Property at 46A Craigie Road, Ayr, KA8 0HA (“the Property”)

Parties:

**Mr Robert Dempsey, Mrs Pauline Dempsey, 53 Fairfield Park, Ayr, KA7 2AU
 (“the Applicant”)**

**Mr Emyr Smith, Mrs Carol Smith, 46A Craigie Road, Ayr, KA8 0HA (“the
 Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member)

Decision

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

Background

1. An application was received under rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a short assured tenancy by the Applicants against the Respondent for the property.
2. The application contained :-
 - A copy of the tenancy agreement,
 - a copy of AT5 Notices ,
 - a copy of the Section 33 and Notice to Quit notices,

- certificate of postal service for the notice to quit and the section 33 notices; and
 - Section 11 Notice.
3. The Notice of the Hearing had been served on the Respondent by sheriff officers on 28 February 2019.
 4. The Applicants' agents, Marjorie Douglas and Robert Cherry, from Messrs CDK Galbraith appeared on behalf of the Applicants. The Second Respondent, Mrs Carol Smith, appeared on her own and the First Respondent's behalf.

Case Management Discussion

5. The Applicants' agent referred me to the papers which had been lodged in support of the application, including the notice to quit and Section 33 notices, and certificate of service. They advised that notice to quit had been served to end the tenancy on 5 November 2018, this was in view of large rent arrears which had accrued for the property. At the beginning of November 2018 the Respondents had asked for time to repay the arrears and pay the rent, and it was agreed to allow them to stay in the property until they got keys for their new property, however they had failed to make payments towards the arrears. The level of arrears had caused stress to their clients and they were seeking the order to be granted today.
6. The Respondents advised that they were seeking some more time to reside in the property, they were moving to Wales at the beginning of June 2019 and wished to remain in the property until then, they had two small children and wanted to try and keep the disruption to their children to a minimum, they would be leaving in June as they had commitments in Wales which commenced in July 2019; they advised that they were currently paying mortgage payments in addition to the rent for the property and therefore they had been unable to repay the arrears but had been paying rent. She asked that the case be continued to allow her to repay the rent arrears and to remain in the property until 5 June 2019.
7. The Applicants' agents advised that given the level of arrears, the failure to make repayments to them and the stress to the Applicants they were seeking to have the order granted today.
8. The Respondent did not dispute that a short assured tenancy had been created, the Respondent did not dispute that they had received notices to quit and the section 33 notices.

Findings in Fact

9. I found the following facts established:-

10. That there was a tenancy agreement between the Applicants and the Respondents in respect of the property.
11. That it had commenced on 5 February 2016 for an initial period of 12 months until 5 February 2017 and it was provided in the lease that it would continue on a monthly basis thereafter.
12. The tenancy agreement had been signed by the parties on 2 and 3 February 2016.
13. The AT5 Forms were in the prescribed format and there was evidence that they had been given to the Respondents prior to the creation of the tenancy agreement.
14. The Notice to Quit and Section 33 Notices contained the prescribed information and both were dated 31 August 2018, both sought vacant possession as at 5 November 2018. Both provided more than 2 months' notice of vacant possession. A postal receipt of these notices was lodged and it appeared therefore that the notices had been served on the Respondents on 1 September 2018.

Reasons for Decision

15. Section 33 of the 1988 Act requires me to grant an order for possession under a short assured tenancy, where the tenancy has reached its term; tacit relocation is not operating; no further contractual tenancy for the time being is in existence; and the landlord has given notice to the tenant that they require possession of the house.
16. I was satisfied that a short assured tenancy had been created.
17. I was satisfied with the terms of the notice to quit and the section 33 notices and. I was also satisfied that these notices had been served on the Respondents.
18. I was satisfied that all of the requirements of section 33 had been met and I consider therefore that I am required to grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.

Decision

I grant an order in favour of the Applicants against the Respondents for recovery of possession of the property.

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.

M Barbour

Legal Member/Chair

19. 3. 19

Date