

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/17/0561**

**Re: Property at FLAT 5 BLOCK 2 SPEIRS COURT, PARK TERRACE, FALKIRK, FK2 0WF (“the Property”)**

**Parties:**

**Roseleaf Ltd in Administration, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD (“the Applicant”)**

**Mr Roy Munro, FLAT 5 BLOCK 2 SPEIRS COURT, PARK TERRACE, FALKIRK, FK2 0WF (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the application dated 20 December 2017 by Roseleaf Limited in Administration, made in terms of rule 66 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017.**

This is an application in terms of Rule 66 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’, made by Mr Marcus DiRollo of Coulters Lettings Limited, on behalf of Roseleaf Limited in Administration. The initial application appeared to be a hybrid of two applications , one in terms of Rule 65 and another in terms of Rule 66. After correspondence between the applicant’s representative and the tribunal, Mr DiRollo advised that he wished to proceed under Rule 66. The application seeks an order for possession of the property at Flat 5 Block 2 Speirs Court Park Terrace Falkirk in terms of s33 of the Housing (Scotland) Act 1988.

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The tribunal had before it the following copy documents:-

1. Application dated 20 December 2017 and received by the tribunal on 21 December 2017.
2. Tenancy agreement between Roseleaf Limited and Mr Roy Munro dated 3 and 10 August 2015.
3. AT5 form dated 3 August 2015.
4. Notice to quit dated 25 August 2017 sent by Coulters Property Sales and Lettings to Mr Munro giving 2 months notice.
5. S33 notice dated 25 August 2017 sent by Coulters Property Sales and Lettings to Mr Munro stating he requires to move from the property by 25 August 2018.
6. Sheriff Officer's execution of service of notice to quit and s33 notice dated 25 August 2017.
7. S 11 notice to local authority dated 5 January 2018.
8. Letter from tribunal to Mr DiRollo dated 15 February 2018 regarding notice to quit.
9. Letter from tribunal to Mr DiRollo dated 19 March 2018 regarding notice to quit.

The tribunal held a case management discussion today with Mr Di Rollo and Mr Munro. Mr Munro was under the erroneous impression that the hearing today related to rent arrears and he produced evidence of his payment to the landlords to clear the arrears which Mr Di Rollo accepted.

The tribunal drew three things to the parties attention:-

1. The lease between the parties is a short assured tenancy and there does not appear to be any provision in the lease to contract out of tacit relocation. This being the case, the lease can only be brought to an end under an application in terms of rule 66 and s33 of the Housing(Scotland) Act 1988 at the ish. The ish in this case would be at the end of the 6 month period.
2. The notice to quit sent to the tenant on 25 August 2017 does not tie in with the ish date. The ish date would be the 28 February 2018 to enable the notice to quit to give the appropriate 28 days notice required.
3. The lease is between Mr Munro and Roseleaf Limited but the title to the property and the amended application is in the name of Roseleaf Properties Limited.

### **Discussion**

The respondent Mr Munro was under the impression that as he has cleared the arrears there is no need for any order to be made. Mr Di Rollo explained that his clients wish to sell the property. The lease was arranged by a different letting agent and the reference to Roseleaf Limited was an error.

Mr Di Rollo acknowledged that he had received the two letters from the tribunal referred to above which made it clear that the notice to quit made no reference to the ish date. He was not able to offer any further information. It was also discussed that the tenancy agreement has been drafted in such a way that tacit relocation is not excluded. Indeed Mr Munro stated that he has had letters from the landlord to the effect that the lease is continuing on a 6 month to 6 month basis.

The tribunal explained that on the basis of the written evidence before it today, the notice to quit is invalid and the application falls to be dismissed. Mr Di Rollo was offered the opportunity of seeking legal advice and having a hearing fixed. He did not seek to avail himself of that opportunity. The tribunal also recommended to the respondent that he seek legal advice in connection with this matter as it is likely that a fresh application will be made.

### **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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**Lesley Ward Legal Member/Chair**

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**23 May 2018**

