



**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 and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/EV/23/2225**

**Re: Property at 69 Moffat Road, Dumfries, DG1 1PB**

**Parties:**

**Mr Christopher Cormack and Mrs Rosslyn Cormack residing at Colonsay, Craigerne Lane, Peebles, EH54 9HQ (“the Applicant”) per her agents TC Young, Solicitors, 7 West George Street, Glasgow, G2 1BA (The Applicant’s Agents”)**

**Ms Robyn Hutchison residing at 69 Moffat Road, Dumfries, DG1 1PG (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory process for eviction and recovery of possession having been established, it is reasonable to grant the Order sought.**

1. By application dated 3 July 2023 (“the Application”), the Applicants’ Agents applied to the Tribunal for an Order for possession of the Property based on the service of statutory notices to bring the tenancy to an end. The Application comprised copy Notice to Quit and copy Section 33 Notice with proof of service, copy short assured tenancy agreement with relevant AT5 between the Parties and copy notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Dumfries and Galloway Council, being the relevant local authority. The Application explained that the Applicants required to terminate the tenancy in order to sell the Property. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 13 October 2023 at

14.00 by telephone conference. The CMD was intimated to the Parties and to the Respondent, in particular, by Sheriff Officer on 7 September 2023.

### **CMD**

2. The CMD took place on 13 October 2023 at 14.00 by telephone. The Applicant did not take part and was represented by Ms. K. Donnelly of the Applicant's Agents. The Respondent, Ms. Hutchison, took part and was not represented.
3. The Tribunal advised Ms. Donnelly that it was satisfied that the statutory procedure for the Application had been carried out correctly. The Tribunal asked the Ms. Hutchison if she opposed the Application and she advised that she did not.
4. Ms. Hutchison advised the Tribunal that she understood that the tenancy had been brought to an end and that she would have to vacate the Property and explained that the advice she had been given by Citizens Advice was to contact Dumfries and Galloway Council Homelessness Options Team who in turn advised that they could not assist until an eviction Order had been granted. Ms. Hutchison further explained that the advice was she was not eligible for assistance if she vacated the Property ahead of the Order being granted.
5. Ms. Donnelly explained that the Applicants, Mrs. Drummond, required to terminate the tenancy in order to sell the Property and explained that they required to sell in order to repay the mortgage on the Property. She explained that the mortgage term had come to an end and that the lenders were seeking repayment.

### **Issue for the Tribunal**

6. The issue for the Tribunal is to determine if the statutory ground is established and if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussion .....including making a decision*". The Tribunal took the view that it had sufficient information to make a decision. Therefore, the Tribunal proceeded to determine the Application.

### **Findings in Fact**

7. From the Application and the CMD, the Tribunal made the following findings in fact: -
  - i) There is a short assured tenancy of the Property between the Parties;
  - ii) A valid Section 33 Notice and a valid Notice to Quit were served;

- iii) The Respondent has not vacated the Property but is prepared to do so;
- iv) The Respondent does not oppose the Application;
- v) The Applicants intend to sell the Property and requires vacant possession to do so and
- vi) The Applicants require to sell the Property to repay the mortgage.

### **Decision and Reasons for Decision**

8. The Tribunal had regard to all the information before it and to its Findings in Fact.
9. The Tribunal took the view that the statutory procedure to end the tenancy had been followed.
10. The Tribunal then considered if it could be satisfied that it is reasonable to issue an eviction order. The Tribunal had regard to the fact that the Applicants intends to sell the Property to repay the mortgage secured against it and requires vacant possession to do so. The Tribunal noted that when the tenancy commenced, the Applicants had had an absolute right to terminate it on the proper statutory notice. The Tribunal noted that the Respondent is prepared to vacate the Property and does not oppose the Application. The Tribunal took the view that continuing the tenancy is not in the interests of either the Applicants or the Respondent. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

### **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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**Legal Member/Chair**

**13<sup>th</sup> October 2023**

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**Date**