



**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 (“the 1988 Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/EV/19/3442**

**Re: Property at Flat 2/02, 230 Dumbarton Road, Old Kilpatrick, Glasgow, G50 5LJ  
 (“the Property”)**

**Parties:**

**Mrs Lesley Hart Williamson, c/o 147 Bath Street, Glasgow, G2 4SQ  
 (“the Applicant”)**

**Bannatyne, Kirkwood, France & Co, 16 Royal Exchange Square, Glasgow, G1 3AG  
 (“the Applicant’s Representative”)**

**Mr Scott Apps, Flat 2/02, 230 Dumbarton Road, Old Kilpatrick, Glasgow, G60 5LJ  
 (“the Respondent”)**

**Tribunal Members:**

**Susanne L M Tanner Q.C. (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) (i) was satisfied in terms of Section 33 of the 1988 Act that the short assured tenancy for the Property has reached its end; tacit relocation is not operating; no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and the Applicants have given to the Respondent two months’ notice stating that they require possession of the house; and (ii) made an order for possession in terms of Section 33 of the 1988 Act**

## Statement of Reasons

1. The Applicant's Representative made an application to the tribunal on 25 October 2019 in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicant seeks the Respondent's eviction from the Property under Section 33 of the 1988 Act (possession on termination of a short assured tenancy).
3. The Applicant's Representative lodged:
  - 3.1. A paper apart for section 5, Possession/Eviction grounds;
  - 3.2. Copy of a short assured tenancy agreement between Gordon Shields Limited, Suite 2, Unit 4, Douglas House, 40-44 Main Street, Milngavie, Glasgow, G62 6BU and the Respondent dated 21 September 2017;
  - 3.3. Copy of an AT5 notice from the Applicant's Agent Gordon Shields Limited on behalf of the Applicant to the Respondent dated 21 September 2017 at 9.15am;
  - 3.4. Copy of notice to the Respondent under Section 33(1)(d) of the 1988 Act, notifying the Respondent that the Applicant required possession of the Property as at 21 September 2019; without proof of service;
  - 3.5. Copy Notice to Quit dated 11 July 2019, notifying the Respondent that he was required to remove from the Property with effect from 21 September 2019, with a copy proof of posting receipt with tracking number dated 11 July 2019; and
  - 3.6. a copy of the Section 11 Notice which was sent to the local authority on 24 October 2019.
4. The Application was considered by a legal member of the tribunal acting under the delegated powers of the president of the tribunal. The Applicant's representative was asked to provide proof of service on the Respondent of the Notice to Quit and Section 33 Notice. The Applicant's Representative responded by sending a further copy of the proof of posting receipt with tracking number which was previously lodged with the Application, stating that service had been competently effected by sending the said notices by recorded delivery and that there was no requirement to provide proof of service.

5. On 29 October 2019, the tribunal's administration obtained the title sheet to the property DMB87677, which shows that the Applicant, Lesley Hart Williamson has been the registered proprietor of the Property since 18 July 2014.
6. On 21 November 2019, the Application was accepted for determination and a Case Management Discussion ("CMD") was thereafter fixed for 17 January 2020 at 1400 in Glasgow Tribunals Centre, 20 York Street, Glasgow.
7. On 4 December 2019, parties were notified by letter of the date, time and place of the CMD and told that they were required to attend. Parties were also advised in the same letter that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the Application, which may involve making or refusing an eviction order. If parties do not attend the CMD this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Respondent was afforded the opportunity to return written representations to the tribunal's offices by 6 January 2020.
8. The Application paperwork and notification of the date, time and place of the CMD was personally served on the Respondents on 17 December 2019.
9. The Respondent did not submit any written representations or make any contact with the tribunal's administration.
10. On 17 January 2020, the tribunal's administration checked the tracking number provided by the Applicant's representative with Royal Mail. The Royal Mail website states that the item was accepted at the post office on 11 July, there was attempted delivery on 12 July and the item was returned to sender on 30 July 2019.

**11. Case Management Discussion ("CMD"): 17 January 2020 at 1400 at Glasgow Tribunals Centre, 20 York Street, Glasgow**

- 11.1. Ms Donnelly, solicitor, from the Applicant's Representative attended on behalf of the Applicant.
- 11.2. The Respondent attended.
- 11.3. The Respondent stated that he personally moved out of the Property 27 or 28 December 2019 but that he still needs time to get his things which are in the Property and to return the keys to the letting agent, Rettie. He

stated that he has moved back in with his dad. He stated that there has been no contact with the letting agent, since they contacted him to state that there would be an inspection which he told them was unsuitable, so they do not know that he has left or that he plans to remove his items and hand back the keys in the near future. He stated that his plan is to move out within the next week or so as he wants to leave the Property.

- 11.4. Ms Donnelly responded that the letting agent and landlord were unaware that the Respondent had moved out or was in the process of moving out of the Property. She stated that the letting agent had seen some recent activity at the property and had been trying to contact the Respondent.
- 11.5. The Respondent stated that there had been no recent contact from the letting agent, despite them having his contact details. In relation to the documents which had been served, he stated that he received the NTQ and the section 33 Notice on 12 or 13 July 2019. They were delivered to him at the property via the normal mail.
- 11.6. Ms Donnelly confirmed that a recorded delivery copy had been sent and a first class copy had been sent and that there had been a telephone call by the Respondent to the letting agents' office following receipt by him. The tribunal chair noted that the Recorded Delivery copy had been returned to sender but that the Respondent acknowledged he had received the other copy of the notices by mail and Ms Donnelly proceeded on that basis.
- 11.7. The Respondent then provided his account of the background to the eviction. He stated that in May 2019, he had agreed a payment plan with the letting agents. He stated that the first letting agents had been Gordon Shields and that Rettie had taken over in the last few months. He stated that he had originally adhered to the payment schedule. When he received the Notice to Quit and the Section 33 Notice he phoned the letting agents to try to find out a bit of background. He asked them why he had been served with notice when a payment schedule had been agreed. He was told that they did not need to give him a reason. He stated to them that he was trying to clear the arrears. He stated that one of the females at Rettie said that she would phone the landlord and get back to him. He stated that he then phoned Citizens Advice to find out about the type of tenancy he was on. The female from Rettie phoned him back a few hours later and told him that he was getting evicted because he was three months behind in his rent. He disputed this, referring to payments he had made in accordance with the payment plan. The following week, another employee of Rettie stated that the reason that he was getting evicted was nothing to do with being three months in arrears and that it was a no fault short assured tenancy eviction. In response to a question from the tribunal chair, the Respondent stated that he was not

suggesting that any of this was a defence to the order for possession which was being sought but was simply background. He stated that the actings of the letting agent were more relevant to the related application for payment CV/19/3444.

- 11.8. Ms Donnelly invited the tribunal to grant the order under Rule 66. She stated that it is a Short Assured Tenancy; the relevant AT5 was served; and that the the Notice to Quit and s33 notice were validly served on 11 July 2019 as the Respondent has confirmed receipt. She stated that subsequent discussions which took place thereafter do not change matters, submitting that the notices had the effect of terminating the contractual tenancy at the ish on 21 September 2019. She submitted that there is no other contractual tenancy in existence; tacit relocation is not operating; the Section 33 notice gave two months' notice that recovery of possession was sought and that those having been served and received by the Respondent, the eviction order should be granted.
- 11.9. The Respondent stated that he understood the submissions which had been made and the basis upon which eviction was being sought and that he did not offer any defence to the Application.

**12. The tribunal makes the following findings-in-fact:**

- 12.1. There was a short assured tenancy between the parties for the initial period 21 September 2017 to 21 March 2018.
- 12.2. Thereafter the tenancy continued by tacit relocation on a six monthly basis and relocated until 21 September 2019.
- 12.3. The short assured tenancy reached its ish on 21 September 2019 by service on behalf of the Applicant on the Respondents, on 12 July 2019, of a Notice to Quit, notifying the Respondents that the tenancy would reach its termination date as at 21 September 2019.
- 12.4. Tacit relocation is no longer operating;
- 12.5. No further contractual tenancy is for the time being in existence.
- 12.6. A Section 33 notice was served on behalf of the Applicant on the Respondent on 12 July 2019, notifying the Respondent that the Applicant required vacant possession as at 21 September 2019.

12.7. The Applicant has given to the Respondent at least two months' notice stating that she requires possession of the Property.

12.8. The Application to the tribunal was made on 25 October 2019, which is within the period of 6 months from the date of service of the notices.

### **13. Findings in Fact and Law**

13.1. The tribunal is satisfied that the requirements of Section 33 of the 1988 Act are met and therefore must make an order for 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.**

Susanne Tanner

**Susanne L M Tanner Q.C.  
Legal Member/Chair**

**17 January 2020**