



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 (1) of the Housing (Scotland) Act 1988 (“the 1988 Act”) and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017**

**Chamber Ref: FTS/HPC/EV/20/2080**

**Re: Property at 12 Carnaughton Place, Alva, Clackmannanshire, FK12 5BY (“the Property”)**

**Parties:**

**Mr Mohammed Siddique, 4 Myretoungate, Alva, Clackmannanshire, FK12 5NG (“the Applicant”)**

**Mr Chigozzie Ononiwu, Ms Stephanie Conway, 12 Carnaughton Place, Alva, Clackmannanshire, FK12 5BY (“the Respondents”)**

**Tribunal Member:**

**Martin McAllister (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be granted in favour of the Applicant for recovery of possession of the Property under Section 33 (1) of the Housing (Scotland) Act 1988.**

**Background**

- 1. This was a case management discussion (CMD) held on 28th April 2021 to consider the application made by the Applicant dated 16<sup>th</sup> September 2021 for an order of possession of the Property in terms of Rule 66 of the Tribunal Rules. The CMD took place by teleconference because of the current coronavirus restrictions.**
- 2. The Applicant and the Respondents are parties to a short assured tenancy agreement in respect of the Property which is dated 1<sup>st</sup> September 2014.**

3. The Applicant is the owner of the Property and has title and interest to make the application by virtue of that ownership.
4. The Respondents were not present on the teleconference and the Tribunal noted that it had copies of executions of service by Sheriff Officers dated 29<sup>th</sup> March 2021 which had been effected on the Respondents. These were in respect of intimation of the date and time of the case management discussion.
5. The Applicant was present on the teleconference and was represented by Mr Kevin Valentine of Stirling Property Shop, letting agents.

### **Preliminary Matters**

6. The purpose of a CMD was explained.
7. Mr Valentine said that he had spoken to Mr Ononiwa the previous day and been advised that the Property would be vacated by the Respondents on 14<sup>th</sup> May. He said that had no way of knowing if this would actually occur.

### **Discussion**

8. The Tribunal considered the documents which had been lodged with the application:
  - (a) Copy of the short assured tenancy agreement dated 1<sup>st</sup> September 2014.
  - (b) Notice to Quit dated 31<sup>st</sup> March 2020 requiring the Respondent to leave the Property by 1<sup>st</sup> June 2020.
  - (c) Notice under Section 33 (1) (d) of the 1988 Act.
  - (d) Proof of Posting of documents dated 31<sup>st</sup> March 2020.
  - (e) Copy of Notice to local authority under Section 11 of the Homelessness etc (Scotland) Act 2003.
  - (f) Various documents relating to non- payment of rent and non -payment of the Applicant's mortgage.
9. The Tribunal noted that the term of the tenancy stated in the short assured tenancy agreement is "1 year, from 01/09/2014 till 01/09/2015, then will continue monthly. Either party can terminate by giving 1 month notice."
10. The Tribunal noted that the tenancy had continued from 1<sup>st</sup> September 2015 on a monthly basis until the Notice to Quit had been served seeking to bring the tenancy to an end as at 1<sup>st</sup> June 2021.

## **11. Findings in Fact**

**11.1 The parties entered into a short assured tenancy agreement on 1<sup>st</sup> September 2014 which stated the term to be from 1<sup>st</sup> September 2014 to 1<sup>st</sup> September 2015.**

**11.2 The tenancy has been continuing on a month to month basis from 1<sup>st</sup> September 2015.**

**11.3 The Respondents are still in occupation of the Property.**

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

**12.1 The Notices dated 31<sup>st</sup> March 2021 brought the tenancy to an end at 1<sup>st</sup> June 2021.**

**12.2 Tacit relocation is not operating.**

**12.3 The Applicant is entitled to an order to recover possession of the Property.**

## **13. Reasons**

### **The Law:**

#### **Section 33 Housing (Scotland) Act 1988**

Recovery of possession on termination of a short assured tenancy

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the sheriff shall make an order for possession of the house if he is satisfied—

(a) that the short assured tenancy has reached its ish;

(b) that tacit relocation is not operating;

(c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

- 14. The Tribunal considered that, in terms of Section 33 (1) (a) of the 1988 Act, the ish date of the tenancy when it came to an end was 1<sup>st</sup> June 2020. The Notice dated 31<sup>st</sup> March which was served on the Respondents brought the tenancy to an end on 1<sup>st</sup> June 2021.**
- 15. The terms of the Notices dated 31<sup>st</sup> March 2020 were such that they brought any tacit relocation to an end.**
- 16. The Tribunal was satisfied on notice being given to the Respondents in terms of Section 33 (1) (d) of the 1988 Act.**
- 17. No evidence of another contractual tenancy in respect of the Property was before the Tribunal.**
- 18. In terms of Section 33(1) of the 1988 Act, the Tribunal being satisfied that Sections 33 (1) (a), (b), (c) and (d) are met, it must make an order for possession of the Property. The Tribunal is satisfied in these matters.**
- 19. The Tribunal saw no purpose in continuing determination of the application to a Hearing and made the Order for possession.**

#### **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.**

**Martin J. McAllister  
Legal Member  
28<sup>th</sup> April 2021**