



**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/19/2655**

**Re: Property at 99 Baird Hill, Murray, East Kilbride, G75 0EG (“the Property”)**

**Parties:**

**Franchville Investments Limited, c/o The Property Bureau, Melville House, 70  
Drymen Road, Glasgow, G61 2RH (“the Applicant”)**

**Miss Michelle Drummond, Mr Stephen Hyslop, 99 Baird Hill, Murray, East  
Kilbride, G75 0EG (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the application should be dismissed and that an  
order for possession should not be granted.**

**Background**

1. An application was received on 23 August 2019 under rule 66 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of possession of the property under a short assured tenancy by the applicant against the respondents.
2. The application included: a style short assured tenancy agreement; copies of the form AT5 signed by each respondent; a copy of the notice required under section 33 of the 1988 Act (‘the section 33 notice’); and a copy of the Notice to Quit, together with certificate of posting.
3. Notice of the case management discussion, together with the application papers and guidance notes, had been served on the respondents by sheriff

officers on behalf of the tribunal on 16 September 2019. No written representations were received from the respondents.

### **The Case Management Discussion**

4. A case management discussion (CMD) was held on 21 October 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was represented by Mr Ian Buchanan, solicitor, Buchanan Burton. One of the respondents, Ms Michelle Drummond, was present and gave evidence on her own behalf. She told the tribunal that the other respondent, Mr Stephen Hyslop, had not lived at the property with her for around a year.
5. Mr Buchanan asked the tribunal to grant an order in favour of the applicant against the respondents for recovery of possession of the property.
6. The tribunal chairperson noted that the short assured tenancy agreement before the tribunal was a style agreement. While this did include the applicant's details (as the landlord) and the property address, it did not include the names of the respondents or the commencement and end dates of the tenancy, and was not signed. Mr Buchanan confirmed to the tribunal that the terms of the tenancy agreement were the same as those set out in the style tenancy agreement. He said that the applicant had mislaid the original tenancy agreement, but pointed to the two form AT5s which had been signed by the respondents and referred to the tenancy starting on 27 August 2015. Ms Drummond confirmed that this was the date on which the tenancy had started.
7. Ms Drummond told the tribunal that she had never received the Notice to Quit or the section 33 notice from the applicant's agent. She said that the first time she had become aware of a Notice to Quit was when this was referred to in an email dated 23 April 2019 from an employee of the letting agent, Property Bureau, about other matters. She showed this email to the tribunal chairperson on her smartphone. She said that she had told the letting agent at that time that she had not received the Notice to Quit, but was told that it was too late for her to do anything about this. She had since taken advice, and said she understood that the Notice to Quit had not been validly served.
8. A certificate of posting dated 22 March 2019 had been submitted with the application, but there was no certificate of posting before the tribunal. Ms Drummond told the tribunal that she had not received any notification of a recorded delivery letter. The tribunal clerk checked the tracking number shown on the certificate of posting on the Royal Mail website during the CMD. This showed that the item had not been delivered and had been returned to the sender on 11 April 2019.

### **Findings in Fact**

9. The tribunal made the following findings in fact:
  - The applicant is the owner of the property.

- The letting of the property is managed on the applicant's behalf by the Property Bureau, Glasgow.
- The AT5 forms were in the prescribed format and had been signed by the applicant's former agent and the respondents on 27 August 2015. The tribunal was therefore satisfied that there had been a short assured tenancy in place between the parties.
- The tenancy commenced on 27 August 2015 for an initial period of 6 months until 27 February 2016.
- The style tenancy agreement provided for the tenancy to continue on a monthly basis at the end of the initial term, until terminated by either party giving at least two months' notice to the other party.
- Both the Notice to Quit and section 33 notice contained the prescribed information and both were dated 22 March 2019. These notices stated that the applicant required vacant possession of the property on or before 27 May 2019.

### Reasons for decision

10. Section 33 of the 1988 Act requires the tribunal to grant an order for possession under a short assured tenancy where: the tenancy has reached its end; 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. The tribunal was not satisfied on the basis of the evidence before it that these requirements have been met, as the Notice to Quit and the section 33 notice had not been validly served on the respondents.

### Decision

The tribunal determined that the application should be dismissed and that an order for possession should not be granted.

### 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.**

Sarah O'Neill  
 Legal Member/Chair

21/10/19  
 Date