



**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/22/1538

**Re: Property at 3 Drummur Foot, Girdle Toll, Irvine, North Ayrshire, KA11 1NW
("the Property")**

Parties:

**Mrs Jennifer Murray, The Gateway, Highmoor Farm, Wigton, Cumbria, CA7 9LH
("the Applicant")**

**Ms Marie Barbour, 3 Drummur Foot, Girdle Toll, Irvine, North Ayrshire, KA11
1NW ("the Respondent")**

Tribunal Members:

Jan Todd (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision in absence of the Respondent

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that an order for eviction be granted**

- **Background**

1. This was a case management discussion to consider the application made by the Applicants dated 22nd May 2022 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules. The CMD took place by teleconference.
2. The Applicant is the Landlord in a Short Assured Tenancy with the Respondent who is the tenant. The Applicant has title and interest by virtue of owning the property.
3. The Applicant attended on the teleconference. The Respondent did not attend on the call and was not represented. She was served a copy of the application and the accompanying papers by sheriff officer on 26th July 2022 and so the

Tribunal was satisfied the Respondent had due intimation of the CMD and that it would be appropriate to proceed in her absence.

4. The Applicant had lodged and the Tribunal had sight and considered the following documents:-
 - a. Application for repossession dated 22nd May 2022
 - b. Copy Tenancy Agreement for the Property dated 14th September 2015
 - c. Copy AT5 Notice dated 14th September 2015
 - d. Notice to Quit dated 11th November 2021 giving notice to leave by 13th May 2022
 - e. S33 Notice dated 11th November 2021 giving notice to remove by 13th May 2022
 - f. Certificate of Citation from John McCaffrey Solicitor certifying he intimated the notice to quit and s33 notice to the tenant by posting 1st class recorded delivery on 11th November 2021
 - g. Royal Mail Track and trace receipt dated 12th November 2021
 - h. S11 notice to North Ayrshire Council
5. The Tribunal sent a direction to the Applicant and Respondent inviting their views on whether it may be reasonable or not for the eviction to be granted.
 - a. Written representations were received from the Applicant confirming she wished to resign from being a Landlord as her daughter had been unwell and she wished to spend more time with her.
 - b. The Respondent also replied in writing advising that she had accepted an offer of a house from the Council and was awaiting the keys. She also asked if the Tribunal would go ahead. The tribunal responded to the Respondent advising that unless the application was withdrawn or either party asked for a postponement the Tribunal would proceed.

The Discussion

6. The Legal Member explained the purpose and order of the proceedings today and invited the Applicant to explain what they were seeking and why. The Tribunal waited approximately until 14.10 to see if the Respondent was going to join the call but she did not join but has lodged written representations as noted above.
7. The Applicant Ms Murray explained that she was seeking an order for possession today. She advised that the appropriate notices were served on the Respondent last year and that she wished to retire from letting and was in the process of ending her tenancies so that she could sell this and 2 other properties that she lets out.
8. She confirmed that her daughter has had some health issues and she wished to spend more time with her. The Applicant confirmed under questions that there were no issues with the tenancy or how the Tenant has conducted the tenancy. She advised that she was on good terms with the tenant and she advised that the Respondent had let her know on 30th August that she was hopefully getting keys to a council property in 2-4 weeks.

Findings in Fact

9. The Applicant and Respondent entered into a short assured tenancy of the Property for a period of 6 months from 14th September 2015 to 13th March 2016.
10. The Applicant is the Landlords and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
11. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
12. The Applicant has served a Notice to quit dated 11th November 2021 terminating the contractual tenancy on 13th May 2022
13. A S33 notice was served on the Respondent giving 6 months' notice that they required possession of the Property by 13th May 2022.
14. The Applicant wishes to cease letting properties and stop being a landlord to spend more time with family.
15. The Respondent who is the tenant has not vacated the property, but has accepted an offer of housing from the Council and is waiting for the keys.
16. A s11 notice in terms of the Homelessness etc. (Scotland) Act 2003 was served on the Local Authority.
17. The Tribunal finds it reasonable that an order for eviction be granted.

Reasons for Decision

18. The Applicants entered into a Short Assured Tenancy with the Respondent on 14th September 2021 the original term of the tenancy was 6 months and an AT5 form was served prior to that date. The Applicant has served a notice to quit terminating the tenancy on an ish or termination date namely 13th May 2022. She has also given notice of her intention to require possession in terms of S33 of the Act.
19. S33 of the Act says "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 First Tier Tribunal for Scotland may make an order for possession of the house if it is satisfied-
 - a) That the short assured tenancy has reached it's ish
 - b) That tacit relocation is not operating
 - c) That no further contractual tenancy 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 and
 - e) That it is reasonable to make an order for possession.

The period of notice required to be given under S33 (1) (d) above is six months, in accordance with the legislation as amended. 6 months' notice has been given.

20. The Short Assured tenancy has reached its ish, tacit relocation is not operating and there is no further contractual tenancy in existence, so the Applicant having given adequate notice in terms of S33 above, can and has applied to repossess the Property. However since April 2020 and Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020, there has been a change to the law on repossessions and before an order for possession is granted the Tribunal has to be satisfied that it is reasonable to grant the order.

21. The Tribunal is able to make any order at a case management discussion as it can after a Hearing. The Tribunal considered carefully the submissions from the Applicant and the written evidence it had before it.
22. The Tribunal is satisfied the appropriate notices have been served bringing the contractual tenancy to an end and giving notice under S33 as well as notice to the local authority.
23. The Applicant has served the relevant notices over 10 months ago and the Respondent has indicated that she has been in contact with the council about rehousing and has an offer of a new house but is waiting for the keys. The Applicant wishes to have a definite date to get repossession and given the Respondent has accepted a new tenancy, is expecting to get the keys by the end of September and that any eviction order granted today cannot be enforced for at least 30 days this gives time for the Respondent to get the keys and move out. The Tribunal balancing the interests of both parties, finds it is reasonable to grant an order for repossession at this CMD and that a hearing is not required.

- **Decision**

An order for repossession was 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.

J. A. Todd

Legal Member/Chair

Date: 12th September 2022