



**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/22/3848**

**Re: Property at Flat 5 Lee, 41A Station Road, Carluke, ML8 5AD (“the Property”)**

**Parties:**

**Ms Diane Hutchison, 8 Greenbank Avenue, Glasgow, G46 6SG (“the Applicant”)**

**Mr James McDowall, Mr Max Cairns, Flat 5 Lee, 41A Station Road, Carluke,  
ML8 5AD (“the Respondents”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member) and Angus Lamont (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that**

**Background**

This was an application dated 20<sup>th</sup> October 2022 and brought in terms of Rule 66 (Application for order for possession upon termination of a short assured tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with her application copies of a short assured tenancy agreement, form AT5, notices to quit, section 33 notices, Section 11 notice, and relevant proofs of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondents had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 17<sup>th</sup> January 2023, and the Tribunal was provided with the executions of service.

## **Case Management Discussion**

A Case Management Discussion was held at 10:00 on 28<sup>th</sup> February 2023 by Tele-Conference. The Applicant did not participate, and was represented by Mr McDonald, letting agent. The Respondents did not participate, nor were they represented. The Respondents had not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal was invited by Mr McDonald with reference to the application and papers to grant the order sought. The Respondent is elderly, and wishes to sell the Property. The Respondents last paid rent in July 2022, and have accrued rent arrears of approximately £12,000.00.

Mr McDonald advised that he suspected that the Respondents had both left the Property, but they had not confirmed that to him or the Applicant and had not returned the keys.

## **Statement of Reasons**

In terms of Section 33 of the *Housing (Scotland) Act 1988* as amended, the Tribunal may make an order for possession of the house let on the tenancy if:

- (1) the short assured tenancy has reached its end;
- (2) tacit relocation is not operating;
- (3) the landlord has given to the tenant notice stating that he requires possession of the house; and
- (4) it is reasonable to make an order for possession.

All of the above criteria had been satisfied in this application, and the Tribunal was satisfied in the circumstances explained by Mr McDonald that it was reasonable to issue an eviction order. The arrears of rent are substantial. The Respondents have failed to respond or engage with the Applicant to agree a reasonable plan to make payments to the landlord.

In the case of *City of Glasgow District Council v Erhaiganoma* 1993 SCLR 592, The Inner House of the Court of Session stated at page 594 that “Where prima facie reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.”

In this application, the Respondents had not responded to this application advancing any arguments that it was not reasonable to issue an order for possession, and had not participated in the Case Management Discussion. The Respondents had put forward no circumstances to show that it would not be reasonable for the Tribunal to issue an order for possession.

## **Decision**

In these circumstances, the Tribunal made an order for possession of the house let on the tenancy as sought in this application.

## **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.**

# N Kinnear

28th February 2023

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Legal Member/Chair

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Date