



**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/18/1709**

**Re: Property at 103 Corsebar Road, Paisley, PA2 9PY (“the Property”)**

**Parties:**

**Mrs Morag McGhee, 11 Juniper Avenue, Bridge of Weir, PA11 3NS (“the Applicant”)**

**Morgan Legal Solutions Limited, Regents House, 113 West Regent Street, Glasgow, G2 2RU (“the Applicant’s Representative”)**

**Mr Paul McComish and Ms Pauline McLaughlin, 103 Corsebar Road, Paisley, PA2 9PY (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession of the property against the Respondents.**

- Background
  - 1 By application dated 6 July 2018 the Applicant sought an order for recovery of possession of the property under section 33 of the Housing (Scotland) Act 1988.
  - 2 Following submission of the application a Case Management Discussion was assigned for 19 September 2018. Copies of the application together with notification of the Case Management discussion were served upon the Respondents by Sheriff Officers on 4 September 2018.
- The Case Management Discussion
  - 3 The Case Management Discussion took place on 19 September 2018 at Glasgow Tribunals Centre. Ms Yvonne Morgan on behalf of the Applicant’s

Representative and the First Named Respondent were both present. The First Named Respondent confirmed that he was also appearing on behalf of the Second Named Respondent.

- 4 Ms Morgan advised that her client sought recovery of possession under section 33 of the Housing (Scotland) Act 1988. Notice to Quit and a notice under section 33(1)(d) of the Act had been served on the Respondents by recorded delivery mail. The Tribunal was therefore obliged to grant repossession.
- 5 The First Named Respondent advised that he had no argument in response to the legal elements of the case. However he outlined a history of difficulties that he and the Second Named Respondent had suffered in recent years. In summary, he advised that they had experienced significant financial difficulties as a result of problems with investors abroad and were due a significant amount of money from unpaid invoices. Furthermore they had been supporting family members with health problems which had been emotionally draining. In addition, he and the Second Named Respondent had also suffered health difficulties, including a recent car crash for which they were awaiting an insurance claim. The First Named Respondent stressed that he had no wish to cause harm to the Applicant, and advised that it had always been his intention to purchase the property. He asked the Tribunal for further time to allow him to do that.

#### Findings in Fact

- 6 The Applicant and the Respondent entered into a Tenancy Agreement dated 5 July 2016 in respect of the Property, the term of which was 5<sup>th</sup> July 2016 to 5<sup>th</sup> July 2017 and monthly thereafter.
- 7 The tenancy was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 8 On 27<sup>th</sup> March 2018 the Respondents were served with a Notice to Quit terminating the tenancy as at 5 July 2018 and Notice intimating that the Landlord required possession of the house. Both Notices were served by recorded delivery mail.
- 9 The tenancy has reached its end as at 5 July 2018. Tacit relocation is not operating.

#### Reasons for Decision

- 10 In this case the Applicant seeks an order for repossession of a short assured tenancy under section 33 of the Housing (Scotland) Act 1988
- 11 Section 33(1) of the Housing (Scotland) Act 1988 provides as follows:-

“(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 First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied—

- (a) That the short assured tenancy has reached its finish;
- (b) That tacit relocation is not operating;
- (c) .....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.”

12 The Tribunal was satisfied that a valid Notice to Quit had been properly served on the Applicant which terminated the contractual tenancy between the parties as at 5 July 2018. Accordingly tacit relocation was not operating and the Respondent had been given notice that the Applicant required possession of the Property. The Respondents did not dispute this. Whilst the Tribunal had sympathy for the difficulties outlined by the Respondents, it was conscious that the provisions of section 33 offered no discretion in its determination of the application. There being no dispute regarding the relevant facts of the case, the Tribunal considered that it was able to make sufficient findings to determine the case without a hearing and that to do so would not be prejudicial to the interests of the parties.

13 The Tribunal therefore concluded that the provisions of section 33 had been met and determined to make an order for repossession.

14 For the avoidance of doubt, the Tribunal wishes to highlight that the granting of the order does not prevent the parties from continuing discussions regarding the sale of the property and the Respondent’s occupation. However the Tribunal cannot compel the Applicant to enter into such discussions which would be at her discretion.

**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.

**Ruth O'Hare**

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Legal Member/Chair

19/9/18  
\_\_\_\_\_  
Date