



**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 (hereinafter referred to as “the 1988 Act”) for Recovery of Possession
of a Short Assured Tenancy**

Chamber Ref: FTS/HPC/EV/20/0061

Re: Property at Flat 3/2, 29 Marwick Street, Glasgow, G31 3NE (“the Property”)

Parties:

**Miss Gail Ross as Guardian for Mr Norman Ross, C/O 104 Bellgrove Street,
Glasgow, G31 1AA (“the Applicant”)**

**Mr Peter Murray, Flat 3/2, 29 Marwick Street, Glasgow, G31 3NE (“the
Respondent”)**

Tribunal Members:

Karen Kirk (Legal Member)

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for Recovery of Possession on termination of a Short Assured Tenancy under Section 33 of the Housing (Scotland) Act 1988. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained to parties. Parties understood a final decision on the Application could also be made.

Attendance and Representation

The Applicant was represented by Lesley McLaughlin, 1-2-Let, Lettings agent, 104 Bellgrove Street, Glasgow, G31 3NE

The Respondent attended personally.

Preliminary Matters

The Applicant's representative provided a copy Certificate of Appointment issued by the Office of the Public Guardian (Scotland) dated 4th November 2019 appointing Gail Ross as Guardian to Norman Ross. A copy of this authority was also provided to the Respondent.

It was confirmed to the Respondent that the written representations lodged by the Respondent's representative had been considered. The Respondent confirmed other than a Time to Pay application relevant to the payment action he did not dispute matters. He indicated he and his daughter would be leaving the property in 2 weeks time. The Tribunal checked with the Applicant's representative that they still wished to proceed and it was confirmed they did wish to do so.

The Tribunal raised the fact that the Application related to a Section 33 Recovery of Possession Application and a Ground 8 Application together. The Applicant said they had decided to include all grounds for recovery but wished to proceed in terms of Section 33 of the Housing (Scotland) Act 1988.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

Case Management Discussion

Ms McLaughlin for the Applicants in his submission stated that the Applicant sought an Order for recovery of possession and that Norman Ross was the heritable proprietor of the property. He has now been diagnosed with advanced dementia and the property is now required due to this change in circumstances. Gail Ross now acts as his guardian and it was she who now instructs Ms McLaughlin. Further parties had entered into a Short Assured tenancy on 6th November 2017. It was agreed the tenancy was a valid Short Assured Tenancy and that the Respondent had received a Notice to Quit by Sheriff Officer bringing the said tenancy to an end on the ish date, namely the 7th December 2019. The Respondent accepted this and the service of same. He explained at the hearing and in the written representations lodged with the Tribunal the difficult circumstances he had experienced looking after and caring for his daughter who has significant mental ill health.

Facts Agreed

- It was accepted that the Applicant was the heritable proprietor of the Property.
- It was accepted that the AT5 had been served correctly at the outset of the tenancy and that the tenancy was a short assured tenancy.
- It was accepted that the relevant notices were valid and had been served terminating the short assured tenancy, proof of appropriate service having been lodged.

- The Respondent had been unable to leave the property prior to the Hearing due to having been unable to secure alternative accommodation both for himself and his daughter but this had been actively pursued and his daughter now had a new property and he was making arrangements to move out within 2 weeks.

Reasons for Decision

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondent had received notification of the proceedings, had attended and had lodged written representations with assistance from his legal representatives.**
- 2. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property.**
- 3. The Tribunal was satisfied that the tenancy was in terms of Section 32(1) of the 1988 Act, a Short Assured Tenancy for not less than 6 months and in relation to which a prescribed notice namely a valid AT5 had been served before creation of the short assured tenancy. It was accepted that the AT5 had been served correctly at the outset of the tenancy.**
- 4. In terms of Section 33 of the 1988 Act the Tribunal considered that the Short Assured Tenancy had reached its ish.**
- 5. Further the Tribunal was satisfied that no tacit relocation was operating, no further contractual tenancy was in existence and a vaild Notice to Quit had been served on the Respondent terminating the tenancy with the necessary notice given to the Respondent.**
- 6. The Respondent accepted that the relevant notices had been received. Proof of a correct method of service of the Notice to Quit had been lodged. He had indicated they intended to leave the property very shortly now secure alternative housing had been found.**
- 7. Accordingly in terms of Section 33 of the 1988 Act the Tribunal granted an order against the Respondent for possession of the Property.**

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.

Karen Kirk

5/3/2020