



**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/20/1064**

**Re: Property at 183/6, Broughton Road, Edinburgh, EH7 4LN (“the Property”)**

**Parties:**

**Mr Massimo Circi, 10 Elgin Terrace, Edinburgh, EH7 5NN (“the Applicant”)**

**Mr Steven Sibbald, 183, Flat 6, Broughton Road, Edinburgh, EH7 4LN (“the Respondent”)**

**Tribunal Members:**

**John McHugh (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the Property should be made in favour of the Applicant.**

**Background**

The Applicant holds the landlord's interest and the Respondents the tenant's interest in a short assured tenancy in respect of the Property dated 12 November 2017.

The Applicant wishes possession of the Property to be granted in his favour as the tenancy has reached its termination date.

**The Case Management Discussion**

A Case Management Discussion (“CMD”) took place by conference call on 24 August 2020. Both the Applicant and the Respondent were present.

The CMD was originally scheduled for 2pm. The parties had a separate application concerning the Property being heard at 10am on the same day. The Tribunal offered

and parties agreed that it would be more convenient to allow the CMD to proceed immediately following upon the conclusion of the Hearing rather than to delay until 2pm.

The Respondent had made a postponement request as a result of the withdrawal of his solicitors on 20 August 2020. The Tribunal was not prepared to grant that request having regard to the fact that the application had been ongoing since April 2020 and the Respondent had had ample opportunity to take advice upon his position in a case which appeared very straightforward.

The Applicant wished to insist upon possession being granted in his favour.

### **Findings in Fact**

The Applicant holds the landlord's interest and the Respondent the tenant's interest in a short assured tenancy dated 12 November 2017.

The tenancy agreement provided for an initial period of one year and then continued on a month to month basis.

On 22 January 2020 the Applicant served a Notice to Quit and a section 33 Notice requiring the Respondent to remove with effect from 12 April 2020.

Since 12 April 2020 the Respondent has remained in occupation of the Property.

### **Reasons for Decision**

The Respondent makes two arguments.

Firstly, he refers to certain advice given by a homeless action group and apparently accepted by the Scottish Government to the effect that evictions should not take place at present because of the COVID-19 pandemic. However, whatever the status of these recommendations, the position remains that section 33 of the 1988 Act remains in force and it sets out the law which the Tribunal must apply.

Secondly, he argues that the tenancy continued by fact of the Applicant having demanded "rent" at the rate of £900/month since 12 April (in which case he argues that the notice to quit etc. are ineffective). This same argument had been made and rejected in the Hearing of the other application earlier in the day.

The Tribunal does not accept the argument that the lease continued after 12 April 2020. A valid Notice to Quit and section 33 Notice had been served. The Applicant conducted himself consistently on the basis that the lease was at an end other than that in documents addressed to the Tribunal and to the Respondent he described the sums relating to the Respondent's occupation as increasing "rent arrears".

Technically, those sums were damages in respect of the unauthorised occupation. It is evident that the Respondent knew that the Applicant regarded the lease as having ended on 12 April. He knew that the Applicant was continuing with this Application for possession before the Tribunal. The Respondent identified no actions which he had taken consistent with a belief on his part that the lease was continuing and that the Applicant was no longer insisting upon possession. The Respondent, for example, did not pay anything in respect of "rent" post 12 April 2020.

The Tribunal is satisfied that the short assured tenancy has reached its end; that tacit relocation is not operating; that no further contractual tenancy is in existence and that the Applicant has given notice stating that he requires possession of the Property. The Tribunal is obliged to grant possession.

### **Decision**

An order for possession of the Property will be made in favour of the Applicant.

### **Right of Appeal**

**In terms of Section 46 of the Tribunals (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.**

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**John McHugh, Legal Member/Chair**

**Date: 24 August 2020**