



**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/18/0161**

**Re: Property at 135/6 High Street, Dalkeith, EH22 1BE (“the Property”)**

**Parties:**

**Mr Thomas Burnet, Mrs Margaret Burnet, care of Allingham and co, 4a  
Buckstone Terrace, Edinburgh, EH10 6PZ (“the Applicants”)**

**Mr Liam McCallum, 135/6 High Street, Dalkeith, EH22 1BE (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

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

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

**Background**

This is an application dated 17<sup>th</sup> January 2018 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 Applicants provided with his application copies of the short assured tenancy agreement, form AT5, Notice to Quit, Section 33 notice, Section 11 notice with letter to the local authority intimating the same and relevant executions 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 Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 13<sup>th</sup> February 2018, and

I was provided with the executions of service. He is accordingly deemed to be aware of the Case Management Discussion.

### **Case Management Discussion**

A Case Management Discussion was held on 14<sup>th</sup> March 2018 at George House, 126 George Street, Edinburgh. The Applicants did not appear in person, but were represented by Mr Runciman, solicitor. The Respondent did not appear in person, nor was he represented.

I was invited by Mr Runciman with reference to the application and papers to grant the order sought. I was also asked to award the expenses of the application against the Respondent in terms of Rule 40 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended, in respect of the expense of bringing this application which Mr Runciman explained was attributable to the Respondent's failure to quit the property.

### **Statement of Reasons**

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

- (a) the short assured tenancy has reached its term;
- (b) tacit relocation is not operating;
- (c) no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
- (d) the landlord has given to the tenant notice stating that he requires possession of the house.

All of the above criteria have been satisfied in this application, and accordingly the Tribunal shall make an order for possession.

With regard to the request to award expenses, Rule 40 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended is in the following terms:

#### **"Expenses**

**40.—(1)** The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.

(2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made."

It is clear that the power to award expenses is a discretionary one. The Tribunal may make such an award against a party "but only where that party through

unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense”.

It may be seen that the unreasonable behaviour complained of must occur “in the conduct of the case”, and not in relation to the party’s preceding conduct which may have caused the applicant to require to bring an application to the Tribunal. Further, the unreasonable behaviour must have put the other party to “unnecessary or unreasonable expense”.

I do not consider that there has been any unreasonable behaviour in the conduct of this case. Indeed, the Respondent has not appeared nor responded in writing to this application. Even if his preceding conduct in not quitting the property when asked were to be categorised as “unreasonable behaviour”, then any such behaviour does not in my view relate to his conduct of the case, and there has been no unnecessary or unreasonable expense resulting from any such unreasonable conduct.

I would note that the tribunal process has been generally designed to be “cost free”, and the power to make an award of expenses is one which is designed to be used in exceptional cases rather than as the norm. This is in contrast to the ordinary courts, where expenses normally follow success.

For these reasons, the Tribunal will refuse the request to make an award of expenses against the Respondent in this application.

### **Decision**

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy as sought in this application, but will refuse the request to make an award of expenses against the Respondent.

### **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

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Legal Member/Chair

14/03/18  
\_\_\_\_\_  
Date