



**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/19/0989

Re: Property at 15 Hawthornden Avenue, Bonnyrigg, Edinburgh

Parties:

**Mr Tsen Wharton, South Side Property Management, 20 Nicholson Street,
Edinburgh, EH8 9DH (“the Applicant”)**

**Gilson Gray LLP, 29 Rutland Street, Edinburgh, EH1 2BW (“the Applicant’s
Representative”)**

**Mr David Allan and Mrs Anne Burnett, 15 Hawthornden Avenue, Bonnyrigg,
EH19 2JP (“the Respondents”)**

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 27 March 2019 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 28th May 2019. The application paperwork together with notification of the Case Management Discussion was subsequently served upon the Respondents by Sheriff Officers.

- 3 The Case Management Discussion took place on 28 May 2019. The Applicant's Representative was in attendance. The Respondents were not present. The Tribunal requested further information regarding the service of the Notices to Quit and a further Case Management Discussion was therefore assigned for 1st July 2019. The Respondents were notified by recorded delivery mail. The Tribunal subsequently received a handwritten letter signed by the Respondents confirming that they had both been served with the Notice to Quit.

The Case Management Discussion

- 4 The Case Management Discussion took place on 1st July 2019 at George House, Edinburgh. Mr Scott Clair appeared on behalf of the Applicant's Representative. Neither the Applicant nor the Respondents were present. The Legal Member noted however that the Respondents had provided the Applicant with a handwritten letter and were therefore aware of the proceedings. The Legal Member was therefore content to proceed with the Case Management Discussion on that basis.
- 5 The Tribunal had before it the application paperwork which included the Tenancy Agreement between the parties, AT5 Notice, Notice to Quit and section 33(1)(d) notice. The Applicant's Representative advised that the Respondents were still in the property. They were not opposing the application for repossession as they hoped to obtain alternative accommodation with the local authority.

Findings in Fact and Law

- 6 The Applicant and the Respondents entered into a Tenancy Agreement dated 5th June 2014 in respect of the Property, the term of which was a period of 6 months from 5th June 2014 and two monthly thereafter.
- 7 The tenancy was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 8 On 14th October 2018 the Respondents were served with a Notice to Quit terminating the tenancy as at 5th February 2019 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 5th February 2019. Tacit relocation is not operating. There is no further contractual tenancy in existence.

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 Respondents which terminated the contractual tenancy between the parties as at 5th February 2019. Accordingly tacit relocation was not operating. The Respondents had also been given notice that the Applicant required possession of the Property.

13 It was therefore clear from the documentation before the Tribunal that the provisions of section 33 had been met. The Respondents had not sought to dispute the terms of the application. Accordingly 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.

14 The Tribunal therefore determined to make an order for repossession under section 33 of the Housing (Scotland) Act 1988.

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.

R.O'Hare

Legal Member/Chair

Date

1st July 2019