



**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/21/3185

Property: Flat 0/1, 13 Clarence Drive, Glasgow G12 9QL ("Property")

Parties:

**Drumkeen Engineering Limited, 107 Hammerfield Avenue, Aberdeen AB10 7FD
("Applicant")**

**Ivy Property, 81 Lauderdale Gardens, Glasgow G12 9LQ ("Applicant's
Representative")**

**Geoffrey and Jaime Guenther, Flat 0/1, 13 Clarence Drive, Glasgow G12 9QL
("Respondent")**

Tribunal Members:

Joan Devine (Legal Member)

Janine Green (Ordinary Member)

Decision

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

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Short Assured Tenancy Agreement dated 20 June 2016; Short Assured Tenancy Agreement dated 20 June 2017; Minute of Variation of Short Assured Tenancy dated 30 May and 4 June 2018; AT5 signed by the Respondents dated 20 June 2017; Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("1988 Act") both dated 15 June 2021 addressed to each of the Respondents; Sheriff Officer's certificate of service evidencing service of the Notice to Quit and section 33 notice on each of the Respondents on 16 June 2021; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email; letter from Meston Reid & Co dated 20 December 2021; information from Companies House

regarding the liquidation of the Applicant and certificate of service by Sheriff Officer evidencing service of the Application on the Respondents on 24 February 2022.

Case Management Discussion (“CMD”)

A CMD took place on 11 April 2022 at 10am by conference call. In attendance for the Applicant was Clare Brown of the Applicant’s Representative; John and Trish Sweeney and their daughter, Jennifer Lamb. Both Mr and Mrs Guenther were in attendance.

Ms Lamb told the Tribunal that she is a solicitor and would represent the Applicant. She said that the Property was owned by the Applicant. Mr Sweeney was the sole director. Mr and Mrs Sweeney were the shareholders. She said that Mr Sweeney wished to retire. The Applicant company had therefore been placed in liquidation. She said that the Property was the sole asset of the Applicant company. She said that she had discussed matters with the liquidator who was content for the Application to proceed.

Mr Guenther told the Tribunal that when the “eviction notice” was first served the reason he was given for seeking eviction was the dispute between the Parties regarding lights in the Property. He said it was only later in October 2021 that he was told the Applicant wished to sell the Property. He said he did not think the Applicant intended to sell. He said that he lived in the Property with his wife and children aged 7, 9 and 11. He said that the children were at the local school. He said that he and his wife had made an offer to buy a property which had been accepted. A date of entry had not been agreed and missives had not yet been concluded. He hoped to obtain entry within 2-4 weeks of concluding missives.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondents had entered into a tenancy agreement dated 20 June 2017.
2. The Applicant and the Respondent had signed the form AT5 on 20 June 2017.
3. The tenancy was for the period 20 June 2017 to 19 June 2018 and unless terminated would continue thereafter on a month to month basis.
4. The tenancy was extended to 20 June 2019 by Minute of Variation dated 30 May and 4 June 2018.
5. A Notice to Quit dated 15 June 2021 was served on the Respondents on 16 June 2021 stating that the tenancy would terminate on 20 December 2021.

6. A Notice in terms of Section 33 of the 1988 Act dated 15 June 2021 was served on the Respondents on 16 June 2021 stating that possession of the property was required on 20 December 2021.
7. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.
8. The Applicant company is in liquidation..

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act. The Tribunal noted that the tenancy had been properly created as a short assured tenancy. The Tribunal noted that a Section 33 Notice and Notice to Quit had been served on the Respondent giving more than six months' notice that the Applicant required possession of the Property. The Tribunal noted that the Applicant company was placed into liquidation in January 2022. The Liquidator had a duty to realise assets and to obtain the best price. The Property was stated to be the only asset of the Applicant company. The Respondent was in the process of buying a property although missives had not yet been concluded. Having considered all of the circumstances, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal grants an Order 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.

Legal Member

Date : 11 April 2022