



**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/22/0457

Property: 4 Flat 8 Hermitage Park Lea, Edinburgh EH6 8DY ("Property")

Parties:

Dr Morven EL Johnson, Spechtsweg 7, 97816 Lohr, Germany ("Applicant")

**Umega Lettings, 10 Lister Square, Edinburgh EH3 9GL ("Applicant's
Representative")**

**Gary James Glen, 4 Flat 8 Hermitage Park Lea, Edinburgh EH6 8DY
("Respondent")**

Tribunal Members:

Joan Devine (Legal Member)

Helen Barclay (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 26 June 2015; AT5 addressed to the Respondent dated 26 June 2015; Notice to Quit dated 23 July 2021 addressed to the Respondent; and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("1988 Act") dated 23 July 2021 addressed to the Respondent; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 15 February 2022; post office receipt dated 30 July 2021; undated email from the Respondent in which he stated he had received a notice to quit and certificate of service by Sheriff Officer evidencing service of the Application on the Respondent on 26 July 2022.

Case Management Discussion (“CMD”)

A CMD took place on 29 August 2022 at 10am by conference call. The Applicant was in attendance along with Arran Ponton of the Applicant’s Representative. The Respondent was also in attendance. The Respondent said that he did not contest the application. The Tribunal noted that the only evidence of service of the Notice to Quit and Section 33 Notice was the post office receipt which was dated 7 days after the date of the notices. Mr Ponton said that the usual process for the Applicant’s Representative when serving notices was to use the royal mail track and trace system. He said that he had not served the notices in this case but the post office receipt was in the Applicant’s Representative’s system related to the Property. The Respondent confirmed that he had received the Notice to Quit and Section 33 Notice.

The Applicant addressed the question of reasonableness. She said that she intended to sell the Property. She said that she had lived in Germany for over 50 years. She said that her husband was nearly 80 and suffered from ill health. He had suffered from cancer and had heart problems. She said that her daughter had multiple sclerosis and had retired in her 30s. Her daughter had a handicapped daughter. She said that her daughter was at risk of losing her home. She said that her daughter’s husband had left her. The Applicant said that she and her husband were supporting their daughter by paying her mortgage. She said that she had 10 grandchildren, one of whom is dyslexic. She said that she and her husband were paying for his education. She said that work required to be undertaken in the Property before it was sold. The Applicant’s Representative had been instructed to sell the Property. Mr Ponton said that the sales team had visited the Property. The Applicant said that she owned no other property in the UK.

The Respondent told the Tribunal that he had occupied the Property for 6 years. He said that he had a son aged 20 who was at college and a daughter aged 16 who was at school. He said that he is divorced from their mother and has access to his children 12 days per month. He said that he is in permanent full time employment as a firefighter.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement dated 26 June 2015.
2. The AT5 was addressed to the Respondent and was dated 26 June 2015.
3. The tenancy was for a period 26 June 2015 to 25 June 2016 and unless terminated would continue thereafter on a month to month basis.

4. A Notice to Quit dated 23 July 2021 was served on the Respondent on 30 July 2021 stating that the tenancy would terminate on 25 January 2022.
5. A Notice in terms of Section 33 of the 1988 Act dated 23 July 2021 was served on the Respondent on 30 July 2021 stating that possession of the property was required on 25 January 2022.
6. The Notice to Quit and Section 33 Notice were not relied upon for the purpose of seeking an order for possession until 15 February 2022.
7. The tenancy had reached its end, tacit relocation was not operating, no further contractual tenancy was in existence.
8. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.

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. Both notices were dated 23 July but as they were not served until 30 July they did not give more than six months' notice that the Applicant required possession of the Property. However, the notices were not relied upon until expiry of more than six months after the notices had been served. In terms of The Coronavirus (Scotland) Act 2020 schedule 1 paragraph 10, the notices were not invalid and could be relied upon. Having considered all of the circumstances, the Tribunal determined that it was reasonable to issue an order for possession of the Property.

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.

Joan Devine

Legal Member: Joan Devine _____

Date : 29 August 2022