



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/EV/23/2981**

**Re: Property at 47 Edenhall Crescent, Musselburgh, East Lothian, EH21 7JJ  
("the Property")**

**Parties:**

**Mrs Ann Young, 41A Rothesay Place, Musselburgh, East Lothian, EH21 7EX  
("the Applicant")**

**Mr James Solway and Mrs Vicky Solway, 47 Edenhall Crescent, Musselburgh,  
East Lothian, EH21 7JJ ("the Respondents")**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order against the Respondents for possession of the Property at 47 Edenhall Crescent, Musselburgh, East Lothian, EH21 7JJ under Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. By application dated 29 August 2023, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") for an order for recovery of possession the Property in terms of Rule 66 the First-tier

Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Short Assured Tenancy dated 14 April 2013 between the parties, an AT5 dated 14 April 2013, a Notice to Quit and Section 33 Notice dated 27 April 2023 expiring on 15 July 2023, a Continuing and Welfare Power of Attorney by Mrs Elizabeth Nimmo in favour of the Applicant and an email and Notice dated 29 August 2023 under Section 11 of the Homelessness etc (Scotland) Act 2003 to East Lothian Council.
3. The Tribunal made further enquiries with the Applicant regarding the Notice to Quit and the Section 33. The Applicant send two further Notices to Quit and Section 33 Notices dated 27 April 2023 with an expiry date of 14 July 2023 and dated 31 August 2023 with an expiry date of 15 August 2023 (*sic*). On 8 November 2023 the Tribunal accepted the application under Rule 9 of the Regulations 2017. The application was served on the Respondents on 7 December 2023 advising that a Case Management Discussion (“CMD”) would proceed on 30 January 2024.
4. The Tribunal issued a Notice of Direction for the Applicant to lodge written submissions as to the Notice to Quit and Section 33 Notice she wished to rely on with reference to Section 33 of the Housing (Scotland) Act 1988 and provide the Tribunal with proof of service of the Notices. The Applicant responded that she wished to rely on the Notice to Quit and Section 33 Notice dated 27 April 2023 with an expiry date of 15 July 2023 with reference to Section 33 of the Housing (Scotland) Act 1988. She explained that as the Property is only 5 minutes away the documents were served in person by prior arrangement with the Respondents and that they could confirm that.

### **Case Management Discussion**

5. The Tribunal proceeded with the CMD on by way of teleconference on 30 January 2024. The Applicant Mrs Young represented herself. The Respondents both appeared. Mrs Solway spoke on behalf of her and her husband, Mr Solway.
6. The Tribunal had before it the Short Assured Tenancy dated 14 April 2013 between the parties, an AT5 dated 14 April 2013, the Notice to Quit and Section 33 Notice dated 27 April 2023 expiring on 15 July 2023, the Notices to Quit and Section 33 Notices dated 27 April 2023 with an expiry date of 14 July 2023 and dated 31 August 2023 with an expiry date of 15 August 2023, the Continuing and Welfare Power of Attorney by Mrs Elizabeth Nimmo in favour of the Applicant and a Notice and email dated 29 August 2023 under Section 11 of the Homelessness etc (Scotland) Act 2003 to East Lothian Council. The Tribunal noted the terms of these documents.

7. Mrs Solway advised the Tribunal that the Respondents did not oppose the application. They accepted the Applicant had the right to use the Property for her sons. She explained her and her husband had taken advice from Midlothian Council who had advised they would need an Order from the Tribunal to get priority points for their homelessness application. She went on to explain that although her and her husband had tried to get a private let, they had been unsuccessful.
8. The Applicant explained she wanted an Order to evict. She had a very good relationship with the Respondents and had arranged to deliver the notices in person to them which she felt was better than relying on Recorded Delivery. When questioned by the Tribunal as to which of the three different sets of notices she had served she advised she had served the Notice to Quit and the Section 33 Notice dated 27 April 2023 which expired on 15 July 2023.
9. Mrs Solway confirmed the notices had been received. She was not currently working so they relied on her husband's income. She understood the Applicant had two adult sons who needed the Property. She and her husband just wanted to move on with their lives.
10. Mrs Young explained to the Tribunal she had placed no pressure on the Respondents to move and had not pushed them to look for alternative accommodation but agreed with the Respondents that she wanted to move on.

### **Findings in Fact**

11. The Applicant and the Respondent agreed by way of Clause 3 of a Short Assured Tenancy Agreement dated 14 April 2013 that the tenancy commenced on 14 April 2013 until 15 October 2013 and that if the agreement was not brought to an end by either party on the end date it would continue thereafter on a monthly basis until terminated.
12. The Applicant's mother Mrs Elizabeth Nimmo is the heritable proprietor of the Property. In terms of a Continuing and Welfare Power of Attorney by Mrs Nimmo the Applicant has the power to manage her mother's affairs and has authority to enter into a tenancy agreement for the Property.
13. The Applicant served a Notice to Quit and a Section 33 Notice both dated 27 April 2023 on the Respondents by personal delivery by prior appointment with the Respondents. The Notice to Quit and the Section 33 Notice expired on 15 July 2023.
14. The Respondents remain in the Property. They are exploring their housing options and have taken advice from Midlothian Council. They hope to be rehoused by Midlothian Council.

15. The Applicant requires possession of the Property for her two adult sons to live in.
16. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on East Lothian Council on 29 August 2023.

### **Reasons for Decision**

17. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by the Applicant and by the Respondent Mrs Solway at the CMD. The Tribunal concluded that the Applicant was entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its end (termination date); the Notice to Quit brought the contractual Short Assured Tenancy to an end, and that the Applicant had given the Respondents notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the property was required by 15 July 2023.
18. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal considered that the Applicant required the Property for her sons. The Respondents had sensibly taken advice on their housing options from Midlothian Council. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.
19. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 as amended it was reasonable to grant an eviction order.

### **Decision**

20. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

## **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

30 January 2024

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Date