



**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/20/0436**

**Re: Flat 5/18, Sailmaker Row, Edinburgh EH6 7JR (“the property”)**

**Parties:**

**Leith Links NHT 2011 LLP, 19 West Tollcross, Edinburgh EH3 9QN (“the applicants”)**

**Mr Livio Callanoda Rocha Flat 5/18, Sailmaker Row, Edinburgh EH6 7JR (“the respondent”)**

**Tribunal Member:**

**Adrian Stalker (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) determined that the requirements of section 33(1) of the Housing (Scotland) Act 1988 were met, and therefore, the Tribunal granted an order for recovery of possession of the property in favour of the applicants.**

**Background**

1. In June 2016, the applicants let the property to the respondent, under a short assured tenancy. The parties entered into a written tenancy agreement. This states, in clause 4: “4.1 The tenancy will commence on 1<sup>st</sup> June 2016 and will end on 2<sup>nd</sup> December 2016. 4.2 If the agreement is not brought to an end by either party on the end date, it will continue on a monthly basis until ended by either party...” The parties executed the tenancy agreement on 11 May 2016.

2. By applications dated 7 February 2020, the applicants sought an order for recovery of possession under section 33 of the Housing (Scotland) Act 1988 (“the Act”), and an order for payment of £1,468.96. The payment order application is

FTS/HPC/CV/20/0438. Reference is made the Tribunal's decision in relation to that case, also dated 9 July 2020.

3. On 21 February 2020, notice of acceptance was granted by a legal member. A Case Management Discussion ("CMD") was fixed for 25 March 2020, at Riverside House, Georgie Road, Edinburgh, in respect of both applications. However, due to the restrictions imposed as a result of the Coronavirus Pandemic, this was postponed. Another hearing was fixed, by teleconference call, at 10am, on 9 July 2020. This was intimated by letter to both parties.

### The CMD

4. The CMD duly took place, by teleconference call, on 9 July 2020. Miss McQuarrie, solicitor, of Messrs TC Young, agents for the applicants, appeared on their behalf.

5. As at 10:10am, neither the respondent, nor any person appearing on his behalf, had entered the teleconference. Accordingly, the respondent did not appear, and was not represented, at the CMD. The Tribunal member had sight of a Royal Mail track and trace record which showed that a letter, intimating the date and time of the CMD to the respondent, had been signed for, on 23 June. The respondent has not, at any time, played any active role in the proceedings relating to this application, or the payment order application. He made no representations to the Tribunal, in advance of either of the scheduled CMDs.

6. Under rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, the First-tier Tribunal may do anything at a CMD which it may do at a hearing, including: hearing the case in the absence of one of the parties (rule 29), and making a decision. In the circumstances, the Tribunal was satisfied, under rule 29, that it was appropriate to proceed with the hearing, in the respondent's absence. Miss McQuarrie asked the Tribunal to grant an order for recovery of possession, under section 33 of the Act.

### Findings in fact, and in fact and law; reasons for decision

7. Along with the application, the applicants had produced copies of: the tenancy agreement; a notice to quit; a sheriff officers' certificate of execution of service of the notice to quit, indicating that service took place on 30 August 2019; a section 33(1)(d) notice; a sheriff officers' certificate of execution of service of the section 33(1)(d) notice, indicating that service took place on 14 November 2019; and notice to the local authority (under section 19A of the Act), sent by email to City of Edinburgh Council on 4 February 2020.

8. The Tribunal was satisfied that these notices were in order. In particular, the notice to quit contained the requisite information, and bore to take effect on 2 November

2019, an ish of the tenancy, which was more than 40 days after service of the notice to quit was effected. The notice under section 33(1)(d) confirmed that the applicants required possession of the property, on 15 January 2020, more than 2 months after service of the notice was effected. Miss McQuarrie confirmed that there was no other contractual tenancy in existence.

9. Accordingly, the Tribunal was satisfied that: (a) the parties' tenancy had reached its ish; (b) the tenancy had been terminated on 2 November 2019 and tacit relocation was not operating; (c) there was no other contractual tenancy between the parties in existence; (d) notice had been given under section 33(1)(d) of the Act; (e) notice had also been given the local authority under section 19A of the Act.

10. The requirements for an order for possession under section 33(1) are met. Accordingly, the Tribunal is required to grant an order for possession under that provision.

### Decision

11. The Tribunal accordingly granted an order for possession under section 33 of the 1988 Act.

### **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.**

**Adrian Stalker**

**Legal Member**

**Date: 9 July 2020**