



**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/20/1329

**Re: Property at 42/9 Newhaven Place, Western Harbour, Edinburgh, EH6 4UJ
("the Property")**

Parties:

**Sandpiper Road NHT 2014 LLP, c/o Rettie and Co, 4 Jamaica Street,
Edinburgh, EH3 6HH ("the Applicant")**

**Bannatyne Kirkwood France & Co, 16 Royal Exchange Square, Glasgow, G1
3AG ("the Applicant's Representative")**

**Mr Lesley McNair, 42/9 Newhaven Place, Western Harbour, Edinburgh, EH6
4UJ ("the Respondent")**

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 Respondent.**

Background

- 1 By application dated 16 June 2020 the Applicants sought an order for repossession against the Respondent under section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The following documents were submitted in support of the application:-
 - (i) Copy Tenancy Agreement between the parties dated 19 August 2016 and Form AT5 of same date;

- (ii) Copy Notice to Quit dated 24 February 2020, terminating the tenancy as at 25 May 2020;
 - (iii) Copy Notice under section 33(1)(d) of the 1988 Act dated 24 February 2020 intimating that the landlord required possession of the house as at 25 May 2020;
 - (iv) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Edinburgh City Council with cover email; and
 - (v) Letter dated 19 July 2019 confirming termination of Mrs Kate McNair's interest in the tenancy.
- 2 By Notice of Acceptance of Application dated 30 June 2020 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds to reject the application. A Case Management Discussion was therefore assigned for 21 August 2020. Due to the ongoing restrictions caused by the Covid-19 pandemic, a Direction was issued by the Chamber President confirming that the case conference would take place by tele-conference.
- 3 The application paperwork together with notification of the date, time and location of the Case Management Discussion was served on the Respondent on 4th August 2020 by Sheriff Officers.

The Case Management Discussion

- 4 A Case Management Discussion took place on 21st August 2020. Ms Euphemia Matheson appeared on behalf of the Applicant's Representative. The Respondent was not present.
- 5 Having been satisfied that the application paperwork had been served upon the Respondent by Sheriff Officers together with notice of the date, time and joining instructions for the tele-conference, the Legal Member determined she could proceed in his absence.
- 6 Ms Matheson addressed the Tribunal on the relevant provisions of section 33. She submitted that the relevant notices had been served by the Applicant, the contractual tenancy was at an end and tacit relocation was not operating. On that basis the Tribunal was obliged to grant the order. She confirmed that Mrs Karen McNair's interest in the tenancy terminated in July 2019.

Relevant Law

- 7 Sections 32 and 33 of the Housing (Scotland) Act 1988 provide as follows:-

32 Short assured tenancies.

(1)A short assured tenancy is an assured tenancy—

(a)which is for a term of not less than six months; and

(b) in respect of which a notice is served as mentioned in subsection (2) below.

(2) The notice referred to in subsection (1)(b) above is one which—

(a) is in such form as may be prescribed;

(b) is served before the creation of the assured tenancy;

(c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and

(d) states that the assured tenancy to which it relates is to be a short assured tenancy.

(3) Subject to subsection (4) below, if, at the finish of a short assured tenancy—

(a) it continues by tacit relocation;

the continued tenancy shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.

(4) Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued tenancy is not to be a short assured tenancy.

(5) Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.

33 Recovery of possession on termination of a short assured tenancy.

(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; and

c).

(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.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

Findings in Fact and Law

- 8 The parties entered into a Tenancy Agreement dated 19 August 2016, the term of which was a period from 25 August 2016 to 25 August 2017, both dates inclusive and monthly thereafter.
- 9 The tenancy was a Short Assured Tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 10 The tenancy was a joint tenancy between the Respondent and Mrs Karen McNair. Mrs McNair's interest in the tenancy terminated on 19 July 2019.
- 11 On 24 February 2020 the Respondent was served with a Notice to Quit terminating the tenancy as at 25 May 2020 and Notice under section 33(1)(d) of the Housing (Scotland) Act 1988 informing her that the Applicants required possession of the property as at that same date. The Notices were served by Sheriff Officers.
- 12 The Short Assured Tenancy has reached its end as at 11 January 2020. Tacit relocation is not operating.
- 13 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

Reasons for Decision

- 14 The Tribunal was satisfied that it was able to make a decision at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Respondent had been given proper notification of the date and time of the Case Management Discussion and therefore had been given the opportunity to participate in the proceedings. The Tribunal was further satisfied that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties.
- 15 The Applicants sought recovery of possession under section 33 of the Housing (Scotland) Act 1988. Section 33 can only be relied upon for repossession of a short assured tenancy. The Tribunal was satisfied based on the application paperwork that the tenancy was a short assured tenancy as defined by section 32 of the 1988 Act in that it was for a minimum of six months and the notice required by section 32(2) of that Act (the Form AT5) had been given to the Respondent prior to the signing of the tenancy agreement confirming that the tenancy he was entering into was a short assured tenancy.

- 16 The Tribunal therefore considered the provisions of section 33. The Respondent had been served with a valid Notice to Quit which terminated the tenancy as at 25 May 2020. That, according to the provisions of the Tenancy Agreement and the Tribunal's own calculations, was a valid ish date. The Respondent had also been given at least two months notice that the landlord required possession of the house as at that date. Based on the Tribunal's findings in fact, the Tribunal therefore considered that the requirements of section 33 had been met. On that basis it was obliged to make the order for repossession.
- 17 The Tribunal therefore made an order for repossession of the property against the Respondent.

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.

21/08/20

Legal Member/Chair

Date