

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**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/18/1833**

**Re: Property at 57A High Street, Prestonpans, EH32 9AQ (“the Property”)**

**Parties:**

**Mr Alan Hamilton, 19 East Bay, North Queensferry, KY11 1JX (“the Applicant”)**

**Ms Lyndsey Gardner, 57A High Street, Prestonpans, EH32 9AQ (“the Respondent”)**

**Tribunal Members:**

**Lesley Johnston (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted.**

**Background**

In this application the Landlord, Alan Hamilton (“the Applicant”), seeks an Order for possession of the property at 57A High Street, Prestonpans, EH32 9AQ in terms of 33(1)(d) of the Housing (Scotland) Act 1988 (“the Act”).

The application is made in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (“the Rules”).

The application complies with the formal requirements of Rule 66.

The Respondent is Lyndsey Gardner. She is the Tenant at the property.

### **The Case Management Discussion**

The case called for a Case Management Discussion on 26 September 2018 at 10am in George House, 126 George Street, Edinburgh.

The Applicant was represented by Mr Matheson, Solicitor, TC Young Solicitors. The Respondent was neither present nor represented.

I am satisfied that the Respondent was given sufficient notice of the hearing, the citation having been personally served on her by Sheriff Officers on 7 September 2018.

### **Submissions**

Mr Matheson moved the Tribunal to grant the application on the basis that the requirements of section 33 of the Act had been complied with. He advised the Tribunal that the Tenant still resides within the property despite having been served with a Notice to Quit and Section 33 Notice. This action was accordingly necessary.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Landlord is the heritable proprietor of 57A High Street, Prestonpans, EH32 9AQ;
2. By Lease dated 1 April 2014 the Applicant and the Respondent entered into a tenancy agreement in respect of the property.
3. The term of lease is as follows: "6 months from 1 April 2014 ("the start date") until 2 October 2014 ("the end date"). If this agreement is not brought to an end by either party on the end date it will continue thereafter on a monthly basis until terminated by either party giving no less than two months' notice to the other party."
4. The term of the lease was for a period of not less than six months
5. An AT5 Notice was served at the commencement of the tenancy, the parties having signed the AT5 on 1 April 2014.
6. The Landlord served a Notice to Quit and Section 33 Notice on the Tenant on 27 April 2018 by Sheriff Officers. The Notices required the Tenant to give possession from the property by 2 July 2018.
7. A section 11 notice was issued by the Landlord's agent to East Lothian Council on 18 July 2018.

8. The application was made to this Tribunal on 19 July 2018.
9. The Tenant has not removed from the property.

### **Decision**

The Tribunal is satisfied that the lease between the parties is a Short Assured Tenancy in terms of section 32 of the Act. That being the case, the Applicant may seek an Order from the Tribunal under section 33 of the Act.

In terms of section 33 of the Act, the Tribunal shall make an order for possession of the property if the Tribunal is satisfied that:

- (a) the short assured tenancy has reached its ish;
- (b) that tacit relocation is not operating;
- (c) that the landlord has given to the tenant notice stating that he requires possession of the house.

The Tribunal is satisfied that the Application meets the terms of section 33. The lease reached its ish on 2 July 2018. Tacit relocation is not operating. The Notice to Quit and Notice in terms of section 33 of the Act were served on the Respondent giving more than two months' notice.

In these circumstances, the Tribunal has no discretion and therefore grants the Order for Possession.

### **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.**

**Ruth O'Hare**

---

Legal Member and Chair

20/9/2018

---

Date