

**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 Housing (Scotland) Act 1988 (“the Act”)**

**Chamber Ref: FTS/HPC/EV/19/0706**

**Re: Property at 9 (1F2) Home Street, Edinburgh, EH3 9JR (“the Property”)**

**Parties:**

**Mr James Benstead, 16 Rosebank Cottages, Edinburgh, EH3 8DA (“the Applicant”)**

**Mr Paul McKenzie, 9 (1F2) Home Street, Edinburgh, EH3 9JR (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the property should be granted in favour of the Applicant.**

**Background**

1. By application dated 29 February 2019 the Applicant seeks an order for possession of the property in terms Section 33 of the Act and of Rule 66 of the First-tier Tribunal for Scotland Housing and Property (Procedure) Regulations 2017 (“ the regulations”). The Applicant lodged a number of documents with the application including a copy short assured tenancy agreement, copy AT5 notice, Notice to the local authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 with covering email to the local authority, Notice in terms of Section 33 of the Act and Notice to Quit, both dated 6 December 2018 and stipulating a date on which the Respondent is required to vacate the property of 22 February 2019, together with Sheriff officer certificate of service dated 10 December 2019.

2. A copy of the application and supporting documentation were served on the Respondent by Sheriff Officer on 16 April 2019. Both parties were notified that the application would call for a Case Management Discussion ("CMD") on 10 May 2019 at George House, Edinburgh at 10.am.
3. The case called before the Legal Member for a CMD on the 10 May 2019. The Applicant was represented by Ms Caldwell, paralegal. The Respondent attended accompanied by a supporter, Reverend Richard Cornfield.

### **Case Management Discussion**

4. Ms Caldwell advised the Legal Member that the Applicant seeks an order for possession of the property. She confirmed that the Applicant purchased the property from the previous owner and became the Respondent's landlord by virtue of the ongoing short assured tenancy. She stated that the requirements of the Act had been met and that the Applicant is entitled to an order for possession.
5. The Respondent confirmed that he had received service of the application and previously had received the Notice to Quit and Section 33 Notice. He did not challenge the validity of these notices or state that the legal requirements of the 1988 Act had not been met. The Respondent explained that he has been on the local authority waiting list for 13 months. He has been told that he should expect an offer of housing from the local authority in about 5 months as the usual waiting time is 18 months. He is worried about where he will live during the intervening period, if he is evicted. In particular, he is worried about having to live in bed and breakfast temporary accommodation, should he become homeless.

### **Findings in Fact**

6. The Applicant is the current owner and landlord of the property.
7. The Respondent is the tenant of the property by virtue of the short assured tenancy with the previous owner, which started on 21 July 2007. He remains in occupation of the property.
8. On the 10 December 2018 the Applicant served a Notice to Quit and Notice in terms of Section 33 of the Act on the Respondent, requiring the Respondent to vacate the property on 22 February 2019.
9. On 28 February 2019 the Applicant sent a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 to Edinburgh City Council.

## **Reasons for decision**

- 10.** Section 33 of the Act states “ (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 ish;
  - (b)** that tacit relocation is not operating; and
  - (c)** 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”.
- 11.** Having considered the documents lodged with the application and the parties submissions at the CMD, the Legal Member is satisfied that the requirements of Section 33 of the Act have been met. The Applicant has served a valid Notice to Quit and Notice in terms of Section 33. The Respondent remains in occupation of the property.
- 12.** The Legal Member therefore determined that an order for possession should be made in favour of the Applicant.

## **Decision**

- 13.** The Tribunal grants an order for possession of the property in favour of the Applicant.

## **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.**

**J Bonnar**

**Josephine Bonnar  
Legal Member/Chair**

**10 May 2019**