

**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/19/1011**

**Re: Property at 2/5 Craighall Terrace, Edinburgh, EH6 4RF (“the Property”)**

**Parties:**

**Thomas Campbell MacLennan as Trustee on the sequestrated estates of Shabbir Hussain, c/o FRP Advisory LLP, Apex 3, 95 Haymarket Terrace, Edinburgh, EH12 5HD (“the Applicant”)**

**Mr Kevin Anderson, Mr Michael Anderson, Ms Rebecca Anderson, Ms Catherine Ann Hilson, 2/5 Craighall Terrace, Edinburgh, EH6 4RF (“the Respondents”)**

**Tribunal Members:**

**Joel Conn (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. This is an application by the Applicant for an order for possession on termination of a short assured tenancy in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The tenancy in question was a Short Assured Tenancy of the Property by Shabbir Hussain (“the Landlord”) to the Respondents commencing on 9 March 2015.
2. The application was dated 29 March 2019 and lodged with the Tribunal shortly thereafter.
3. The application relied upon Notices to Quit and notices in terms of section 33 of the Housing (Scotland) Act 1988, both dated 23 January 2019, providing the Respondents with notice (respectively) that the Applicant sought to terminate the Short Assured Tenancy and have the Respondents vacate the Property. The Notices to Quit specified this should be done by 9 March 2019 and the Section 33 Notices by 25 March

2019. Evidence of service of the said notices by Sheriff Officers upon the Respondents on 25 January 2019 was provided to the Tribunal. A copy of the entry in the Register of Insolvencies regarding the sequestration of the Landlord and the appointment of the Applicant as his Trustee in Bankruptcy was further provided.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon City of Edinburgh Council ("the Council") was provided with the application.

### **The Hearing**

5. On 25 June 2019, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at the George House, Edinburgh, I was addressed by Mark Barrett, solicitor of Addleshaw Goddard, for the Applicant and by the First Named Respondent, Kevin Anderson, on behalf of all the Respondents.
6. The Applicant's agent confirmed that the application for eviction was still insisted upon. No order for expenses was sought.
7. The First Named Respondent confirmed that he and his family were keen to be rehoused and the Property was in a poor condition. He explained, however, that all previous attempts to have the Council prioritise their rehousing had failed as they had been told that the Notices to Quit were invalid. He said that they had also been told this by two advisers, Chai and Y People, though neither were able to attend to today. He had little recollection of the specific issues. He recalled that there had been previous Notices to Quit that had "not been on an anniversary date" and he thought that the issue with the current notices were that they were from the Applicant and not the Landlord. He had been told by the Council that the Landlord was not yet bankrupt. He said, however, that his partner had principally dealt with matters and, though she had received an email explaining further, he did not have a telephone with him and could not obtain further details today.
8. In all the circumstances, the First Named Respondent sought a continuation for them to seek legal advice though what he really wanted a "valid Notice to Quit" which he could take it to the Council so as to be rehoused. He was anxious about the prospect of an eviction order passing today, with a potential eviction process commencing within 31 days and thus an insufficient time for them to be rehoused. He stressed that the Respondents had lived in the Property for 20 years and that his partner (whom I took to be the Fourth Named Respondent, Ms Hilson) had local care commitments that meant they required to be rehoused in the same area.

### **Findings in Fact**

9. On 9 March 2015, the Landlord let the Property to the Respondents by lease with a start date of 9 March 2015 until 31 March 2018 (“the Tenancy”).
10. The Tenancy was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988 further to the Landlord issuing the Respondents with a notice under section 32 of the 1988 Act (an “AT5”) on 9 March 2015, prior to commencement of the Tenancy.
11. On 16 July 2015, the Applicant was appointed Trustee in Bankruptcy of the sequestrated estates of the Landlord, with a date of sequestration of 13 October 2014. The Applicant is vested in the estate of the Landlord, including the Property. The Applicant has not been discharged as Trustee.
12. On 23 January 2019, the Applicant’s letting agent drafted a Notice to Quit in correct form addressed to each of the Respondents, giving each Respondent notice that the Applicant wished them to quit the Property by 9 March 2019.
13. 9 March 2019 is an ish date of the Tenancy.
14. On 23 January 2019, the Applicant’s letting agent drafted a Section 33 Notice under the 1988 Act addressed to the each of the Respondents, giving each Respondent notice that the Applicant required possession of the Property by 25 March 2019.
15. On 25 January 2019, Sheriff Officers acting for the Applicant competently served each of the notices upon each Respondent. The Respondents were thus provided with sufficient notice of the Applicant’s intention that the Tenancy was to terminate on 9 March 2019 and that vacant possession was required by 25 March 2019.
16. On 29 March 2019, the notice period under the notices having expired, the Applicant raised proceedings for an order for possession with the Tribunal, under Rule 66, the grounds of which being that the Tenancy had reached its ish; that tacit relocation was not operating; that no further contractual tenancy was in existence; and that notice had been provided that the Applicant required possession of the Property all in terms of section 33 of the 1988 Act.
17. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon the Council on or around 29 March 2019 on the Applicant’s behalf.
18. On 22 May 2019, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondents, providing the Respondents with sufficient notice of the CMD of 25 June 2019.

## Reasons for Decision

19. The application was in terms of rule 66, being an order for possession upon termination of a short assured tenancy. I was satisfied on the basis of the application and supporting papers that the necessary notices had been served with sufficient notice.
20. Though the Respondents were aware that others had disputed the notices, the details of the dispute were not provided and I could discern no grounds for dispute (except perhaps due to an erroneous interpretation of the Applicant's rights as Trustee for the Landlord). I was satisfied that the requirements of the 1988 Act had been complied with.
21. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. I was thus satisfied to grant an order for possession.
22. I encouraged parties to communicate with each other on receipt of this Decision. The First Named Respondent was urged to contact the Council immediately with a copy of the Decision and associated Order to show that the Respondents were being evicted and that they required rehoused. Thereafter, they should keep the Applicant's agents informed as to any timescale for rehousing. On the Applicant's part, given the length of time the sequestration has been ongoing for to date, I encouraged his agent to look favourably on any attempt by the Respondents to vacate voluntarily, so as attempt to avoid the need for a formal eviction.

## Decision

23. In all the circumstances, I make the decision to grant an order against the Respondents for possession of the Property under section 33 of the Housing (Scotland) Act 1988 in normal terms.

## 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/Chair

25 June 2019  
Date