



**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/20/1199**

**Re: Property at 25 Coates Gardens, Edinburgh, EH12 5LG (“the Property”)**

**Parties:**

**Mr Jonathan Leiper, c/o AM Lettings, 11 South Street, Dalkeith, EH22 1AH (“the Applicant”)**

**Mr Thomas Sillar, 25 Coates Gardens, Edinburgh, EH12 5LG (“the Respondent”)**

**Tribunal Members:**

**Susan Christie (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order is granted for recovery of possession of the Property.**

**Background**

- 1 The Application under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) was made by the Applicant’s Representative on 25 May 2020.
- 2 A Notice of Acceptance of Application is dated 9 June 2020.
- 3 The Applicant seeks recovery of possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (the 1988 Act).
- 4 A conference call Case Management Discussion (CMD) was scheduled for 19 August 2020 at 2pm.
- 5 The Parties were written to by letter dated 27 July 2020.
- 6 Intimation on the Respondent was made by Sheriff Officer, personal service, on 28 July 2020.
- 7 Written responses were due to be submitted by the Respondent by 17 August 2020. None were lodged.

## **Case Management Discussion (CMD) 19 August 2020**

- 8 A Case Management Discussion (CMD) took place on 19 August 2020 at 2p.m. by conference call. The Applicant's Representative, Ms Barr, participated.
- 9 The Respondent did not participate. The CMD started slightly later than scheduled to allow room for any latecomers. I was satisfied that proper intimation had been made on the Respondent and that he was told that he should participate in the CMD. I proceeded with the CMD in his absence, the procedure having been fair.
- 10 The paperwork submitted along with the Application was examined and discussed and included additional paperwork produced regarding an increase in the rent arrears.
- 11 The Short Assured Tenancy (SAT) between the Applicant and the Respondent was signed on 21 October 2016. It was for an initial term from 12 October 2016 to 21 October 2017, then recurred monthly thereafter by agreement. An AT5 had been produced along with an acknowledgement showing that it had been served prior to the SAT being signed.
- 12 The Respondent had been served with a Notice to Quit and Section 33 Notice under the 1988 Act by Sheriff Officer, mode of service by letterbox and ordinary post, on 13 March 2020.
- 13 A copy Section 11 Notice was with the paperwork along with evidence of service on the local authority.
- 14 The Sheriff Officers Reports both indicated that the Respondent was still in occupation at their respective dates. Accordingly, an Order was sought.
- 15 The rent was around £5,125 in arrears.

## **Findings in Fact**

- I. The Applicant entered into a Short Assured Tenancy (SAT) with the Respondent over the Property on 14 November 2017 for an initial term 12 October 2016 to 21 October 2017, then recurred monthly thereafter, recurring on 21st of every month.
- II. The Applicant is the owner of and Landlord over the Property and is registered as such.
- III. The Short Assured Tenancy continued monthly by agreement after the initial term.
- IV. A Notice to Quit dated 10 March 2020 was served on the Respondent on 13 March 2020 by Sheriff Officer letterbox service and by ordinary post.
- V. The contractual Short Assured Tenancy ended by reason of the Notice to Quit on 21 May 2020.
- VI. A Section 33 Notice in terms of the 1988 Act was served on the Respondent, at the same time on 13 March 2020 by said Sheriff officers and complied with the requirements under Section 33 (1) (d). It was given with 2 months' notice.
- VII. The Applicant is entitled to recovery of possession of the Property from the Respondent, the requirements set out in Section 33 of the 1988 Act having been satisfied.
- VIII. The Application dated 25 May 2020 for recovery of possession of the Property is accordingly granted.

## **Reasons for Decision & Decision**

I was satisfied that a decision could be made today on the undisputed facts and as there was enough material before me to do so. I was satisfied that the procedure was fair.

I was satisfied that the tenancy between the Parties was a SAT under Section 32 of the Act.

I require to grant recovery of the Property in terms of Section 33 of the Act if I am satisfied

- The SAT has reached its finish
- That tacit relocation is not operating
- That no further contractual tenancy is in existence and
- The landlord has given to the tenant notice stating that it requires possession of the house, on a period of notice of 2 months.

I was so satisfied and made an Order for recovery of possession of the Property.

## **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.**

Susan Christie

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**Legal Member/Chair**

19 August 2020

**Date**