



**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/19/0266

**Re: Property at 27A Dalmeny Street, Edinburgh, Midlothian, EH6 8PG (“the
Property”)**

Parties:

Mr Ronald Graham, 5 Durham Grove, Edinburgh, EH15 1PX (“the Applicant”)

**Miss Katie Thomas, 27A Dalmeny Street, Edinburgh, Midlothian, EH6 8PG (“the
Respondent”)**

Tribunal Members:

Graham Harding (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant was entitled to an order against the
Respondent for possession of the property and the ejection of the Respondent
from the property**

Background

1. By application dated 24 January 2019 the Applicant's representatives TC Young, Solicitors, Glasgow applied to the Tribunal for an order for possession of the property and the ejection of the Respondent from the property in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The applicant's representatives provided the Tribunal with copies of the tenancy agreement, Form AT5, Notice to Quit, Section 33 Notice, Sheriff Officers Execution of Service relating to the Notices, Section 11 Form, email to Local Authority and authority to act.
2. By Notice of Acceptance dated 8 February 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management Discussion was sent to the Applicant's representative by post and to the Respondent by Sheriff Officers on 27 February 2019.

The Case Management Discussion

4. The Case Management Discussion was held on 18 March 2019 at George House, 126 George Street Edinburgh. It was attended by Ms Nicola Caldwell on behalf of the Applicant's representatives, T C Young, Solicitors, and by the Respondent herself.
5. For the Applicants Ms Caldwell provided the Tribunal with a copy of her client's title deed confirming the property was owned in the joint names of the Applicant and his wife Mrs Lynne Graham. This was acknowledged by the Respondent.
6. The Respondent confirmed that she had entered into a Short assured tenancy for the property that had commenced on 17 May 2016 and had continued until 22 November 2016 and then from month to month thereafter. The Respondent confirmed she had been given Form AT5 prior to the commencement of the Tenancy and acknowledged her signature on that document.
7. The Respondent confirmed that she had received the Notice to Quit advising her that she had to leave the property on 22 December 2018 and that it had been served by Sheriff Officers. She said she could not recall receiving the Section 33 Notice at the same time but did not dispute that if the Sheriff Officers Execution of Service stated that it had been served on her along with the Notice to Quit then it would have been.
8. Ms Caldwell confirmed that the Section 11 Notice had been sent by email to Edinburgh Council at the commencement of these proceedings.
9. The Tribunal indicated to the Respondent that all the paperwork that was necessary in terms of the statute to bring the tenancy to an end appeared to be in order and queried what, if any, defence the Respondent had to oppose the order being granted. The Respondent explained that her reason for not moving out was that she had a little nine year old girl and she had not wanted to spend Christmas living in a squat. The Respondent went on to say that she had been looking for alternative accommodation but there was none available and certainly none in the area she was wanting. She had been to the Council and they had told her they could not house her until she was actually homeless. She said that she was not prepared to move into Bed and Breakfast or hostel accommodation with her daughter. If she had to move to another area that would impact on her daughters schooling. She felt that the Applicant should not have raised the proceedings as she was continuing to pay her rent and she would move out once she found somewhere suitable to live.

10. For her part Ms Caldwell advised the Tribunal that her instructions were to ask the Tribunal to grant the order. The paperwork was all in order and the Applicant was entitled to the order sought.

Findings in Fact

11. The parties entered into a Short Assured Tenancy Agreement that commenced on 17 May 2016 and endured until 22 November 2016 and then on a month to month basis thereafter.
12. Sheriff Officers served a Notice to Quit and Section 33 Notice on the Respondent on 22 October 2018 giving the Respondent until 22 December to leave the property.
13. The Applicant's representatives intimated notice of Proceedings to Edinburgh Council in a Section 11 Notice by email on 21 January 2019.
14. The Respondent has continued to reside in the property with her nine year old daughter. To date she has been unable to find suitable alternative accommodation.
15. The Applicant has satisfied the requirements of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") and is entitled to an order for possession of the property.

Reasons for decision

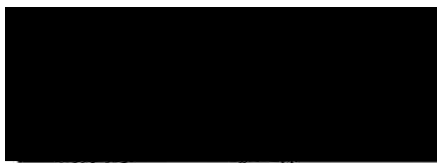
16. The Tribunal was satisfied from the documents produced by the Applicant's representatives that the parties had entered into a Short Assured Tenancy and therefore that the Applicant would be entitled to bring the tenancy to an end if the requirements of Section 33 of the 1988 Act were met.
17. The Tribunal was satisfied that the Notice to Quit, Section 33 Notice and Section 11 Notice were all in proper form and properly served or intimated.
18. The Respondent did not dispute that the paperwork was in order but rather that she had remained in occupation of the property because she had not wanted to be homeless at Christmas and because she had been unable to find alternative accommodation. It was explained to the Respondent that this did not constitute a defence as the Tribunal was obliged in terms of the statute to grant the order if the Applicant complied with the terms of Section 33 of the 1988 Act. Accordingly the Applicant was entitled to the order sought.
19. It was apparent that the Respondent was distressed at the Tribunal's decision and it was pointed out to the Respondent that the fact that the order for possession had been granted but would not take effect for at least 30 days may assist the Respondent in her dealings with the Edinburgh Council Homeless Unit and finding alternative accommodation.

Decision

20. Having considered the documentation provided by the Applicant's representatives and heard the submissions of the Applicant's representative and the Respondent and being satisfied that the conditions for possession of the property in terms of Section 33 of the 1988 Act have been met finds the Applicant entitled to an order against the Respondent for possession of the property and the ejection of the Respondent from 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.



Legal Member/Chair

18 March 2019

Date