



**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/19/0410

Re: Property at 72 Broomfield Crescent, Edinburgh, EH12 7LX (“the Property”)

Parties:

**Mactaggart & Mickel Homes Limited, c/o DJ Alexander Lettings Ltd, 1 Wemyss
Place, Edinburgh, EH3 6DH (“the Applicant”)**

**Miss Ada Pagan, 72 Broomfield Crescent, Edinburgh, EH12 7LX (“the
Respondent”)**

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that it would determine the application without a
Hearing and made an Order for Possession of the Property.**

Background

By application, received by the Tribunal on 7 February 2019, the Applicant sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”).

The application was accompanied by a copies of a Short Assured Tenancy Agreement between the Parties commencing on 5 April 2005 and, if not terminated on 5 October 2005, tacitly relocating on a monthly basis until termination by two months’ notice given by either Party to the other, a Notice to Quit and a Form AT6 Notice given under Section 33 of the 1988 Act, both dated 31 October 2018 and both requiring the Respondent to vacate the Property by 5 February 2019.

On 21 March 2019, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 8 April 2019. The Respondent did not make any written representations, but on 11 April 2019, City of Edinburgh Council advised the Tribunal

that she had been in hospital since December 2018 and that the Council were putting in place an application for welfare guardianship.

The Case Management Discussion on 12 April 2019 was continued pending confirmation of the proper management of the Respondent's affairs. A further Case Management Discussion was held on 6 June 2019 at which a social worker appeared for the Respondent and confirmed that the Respondent was still in hospital and that she had been unable to instruct a solicitor because of lack of capacity. The case was continued again to allow Welfare Guardianship and Financial Intervention Orders to be granted.

The reconvened Case Management Discussion took place at George House, 126 George Street, Edinburgh on the morning of 26 August 2019. The Applicant was represented by Mr Steve Robbins of DJ Alexander Lettings Ltd. The Respondent was not present or represented.

Mr Robbins told the Tribunal that he understood the Respondent was still in hospital and that she was contesting the application for a Welfare Guardianship Order. His clients had tried very hard to work with the social work department while the Welfare Guardianship Order was in process of being obtained, but now felt that there might be a further considerable delay in resolving the situation, so he was asking the Tribunal to grant the Order for Possession without a Hearing.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 states that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would determine the application without a hearing.

Section 33 of the 1988 Act provides that the Tribunal shall make an Order for Possession of a house let on a Short Assured Tenancy if satisfied that the Short Assured Tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence and that the landlord has given to the tenant notice that he requires possession of the house.

The Tribunal was satisfied that the Short Assured Tenancy had reached its end, that, by service of the Notice to Quit, tacit relocation was not operating, that no further contractual tenancy was for the time being in existence and that the Applicant had given the Notice required under Section 33 of the 1988 Act. Accordingly, the requirements of Section 33 of the 1988 Act had been met and the Tribunal was bound to make an Order for Possession of the Property.

Decision

The Tribunal determined that it would determine the application without a Hearing and made an Order for 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.

George Clark

Legal Member/Chair

26 August 2019

Date