



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/EV/18/2067**

**Re: Property at 14/3 Loganlea Avenue, Edinburgh, EH7 6PG (“the Property”)**

**Parties:**

**Mr David McGranaghan, 13 Albina Way, Baldivis, Western Australia (“the Applicant”)**

**Ms Olivia Keenan, for Jackson Boyd Lawyers LLP (“the Applicant’s representative”)**

**Mr Miroslaw Fornal, 14/3 Loganlea Avenue, Edinburgh, EH7 6PG (“the Respondent”)**

**Attendees at CMD:**

**The Respondent**

**The Applicant’s representative**

**Mr Michal Solach, supporter for the Respondent**

**Ms Kaja Gizegorczyzn, Polish Interpreter arranged by SCTS**

**Tribunal Member:**

**Aileen Devanny (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order should be granted against the Respondent for repossession of the Property under section 33 of the Housing (Scotland) Act 1988.**

## **Background**

An application was made by the Applicant under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The application sought an order for repossession of the Property against the Respondent.

The Application consisted of the application form duly completed, the short assured tenancy agreement which stated that the tenancy commenced on 1 June 2017 with an original term of 6 months and then continuing on a month to month basis, a copy AT5 signed by the Respondent, a Notice to Quit and Section 33 Notice both dated 28 May 2018 and written confirmation of service of these notices on the Respondent on 29 May 2018. The bundle also contained the Section 11 Notice to the Local Authority in terms of the Homelessness etc. (Scotland) Act 2003.

## **The First Case Management Discussion 16 November 2018**

The case called for a case management discussion (CMD) at 10am on 16 November 2018 at George House, Edinburgh. Those in attendance were the Applicant's representative, Respondent, Mr Michal Solach, and Mr Slawomir Justynski. The Applicant was not present.

Early in the discussion, the interpreter arranged by SCTS stated that he felt that a further professional interpreter was required to assist communication with the Respondent.

Mindful of the Overriding Objectives in Rules 2 and 3 of the Procedural Rules, the Tribunal considered that it was important that the Respondent could fully participate in the proceedings and therefore restricted the CMD to explaining the process and issuing directions to assist the next CMD.

The Applicant's representative acknowledged the communication difficulties of the Respondent but stated that a delay caused the Applicant prejudice on two grounds that further rent arrears were accumulating and there would be further delay in recovery of the property. He acknowledged that an adjournment was appropriate.

The continued CMD was fixed for 17 December 2018 at 10am to be held at George House D25, 126 George Street, Edinburgh EH2 4HH. This date was intimated to the Applicant's representative and Respondent and written confirmation of the details of the next CMD was provided to these parties by the hearing clerk at the end of the CMD.

Despite there being written evidence of service and of receipt of application papers by the Respondent, the hearing clerk provided a further copy of the case papers at the end of the proceedings as the Respondent seemed unclear as to whether he had received the case papers.

The Tribunal, on its own initiative, issued directions to the parties relating to the progress of the application and the additional information to be provided by parties.

These directions were made in terms of Rule 16 of the Procedural Rules and are contained in the attached Directions.

In advance of the next CMD the Applicant and Respondent submitted written clarification on the points raised in the Directions and the parties' respective positions.

### **The Second Case Management Discussion held on 17 December 2018**

The Applicant's representative appeared as did the Respondent and his supporter and a Polish Interpreter. The Tribunal administration had written to the Respondent on 5 December 2018 to advise of the arrangement for the attendance of a Polish interpreter and scribe at the CMD. He was asked to advise if further supports were needed. The parties were told in advance that the Tribunal could decide the matter at a CMD if satisfied it had sufficient evidence and it was fair to do so.

Mr Solach helpfully assisted the Respondent throughout the proceedings with communication between the Polish translator and the Respondent.

The Applicant sought an order for possession.

The Respondent's challenge to the eviction order at the CMD and in his written responses to the Direction was confined to background details of how he had found himself unable to keep up rent payments, his current financial position, and his difficulty sourcing an alternative tenancy at a lower rent. He was given an opportunity but did not provide any challenge to the grant of the order on legal grounds.

### **Findings in Fact**

1. A Short Assured Tenancy is in place between the parties.
2. A Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988 have been served on the Respondent by the Applicant. The tenancy was terminated on an ish date.
3. The terms of section 33 of the Housing (Scotland) Act 1988 have been complied with.
4. The Respondent was required to remove himself from the Property on or before 1 August 2018 and had failed to do so and remains resident in the Property.

### **Reasons for Decision**

In terms of Section 33(1) of the Housing (Scotland) Act 1988, as amended, an order for possession of the house until a short assured tenancy shall be made if the Tribunal is satisfied that

- (a) that the short assured tenancy has reached its finish;
- (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.

In this case it is not disputed that the tenancy is a short assured tenancy which has reached its original ish date on 1 December 2017 and continued thereafter month to month. The landlord has served a Notice to Quit with two months' notice for the ish on 1 August 2018 and thus tacit relocation does not operate. The contractual tenancy has come to an end. The Landlord has served on the Respondent a notice in terms of Section 33(1) of the 1988 Act with the required 2 months' notice.

The Tribunal has no discretion if the tests in Section 33(1) of the Housing (Scotland) Act 1988 have been met. The conditions for an order for possession has been evidenced by the application and documents lodged and not disputed. The Applicant is entitled to the order sought.

### **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.**

Aileen Devanny

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**Legal Member/Chair**

17 December 2018  
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**Date**