



**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 (“the 1988 Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/EV/18/2956**

**Re: Property at 9 Yewlands Gardens, Edinburgh, EH16 6TA  
 (“the Property”)**

**Parties:**

**Mr Ian McDonald, 77 Clermiston Road, Edinburgh, EH16 6TA  
 (“the Applicant”)**

**Mr Leslie, Leslie & Co, Blackrock House, 2 Millar Crescent, Edinburgh, EH10  
 5HW  
 (“the Applicant’s Representative”)**

**Mr Derek Mills and Mrs Deborah Mills, 9 Yewlands Gardens, Edinburgh, EH16  
 6TA  
 (“the Respondents”)**

**Tribunal Members:**

**Susanne L M Tanner Q.C. (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) was satisfied in terms of Section 33 of the 1988 Act that the short assured tenancy for the Property has reached its end; tacit relocation is not operating; no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and the Applicants have given to the Respondents two months’ notice stating that they require possession of the house; and made an order for possession in terms of Section 33 of the 1988 Act.**

## Statement of Reasons

### 1. Procedural background

- 1.1. The Applicant made an application to the tribunal on 1 November 2018 in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
- 1.2. The Applicant seeks the Respondent's eviction from the Property under Section 33 of the 1988 Act (possession on termination of a short assured tenancy).
- 1.3. The Applicant lodged:
  - 1.3.1. a copy of the two AT5 notices to the Respondents, both dated 8 May 2015;
  - 1.3.2. a copy of the short assured tenancy agreement between the Applicant and the Respondents dated 8 May 2015;
  - 1.3.3. An Inventory report dated 17 May 2015;
  - 1.3.4. Copies of the two notices to the Respondents under Section 33(1)(d) of the 1988 Act, dated 18 April 2018, notifying the Respondents that the Applicant required possession of the Property as at 19 June 2018; (no proof of service)
  - 1.3.5. Copies of two Notices to Quit dated 18 April 2018, notifying the Respondents that they were required to remove from the Property with effect from 19 June 2018 (no proof of service);
  - 1.3.6. a copy of the Section 11 Notice which was sent to the local authority.
  - 1.3.7. Tenant Information Pack acknowledgement dated 8 May 2015.
  - 1.3.8. Rent arrears statement to 1 November 2018.
  - 1.3.9. On 28 November 2018 the tribunal's administration asked the Applicant to confirm by 12 December 2018 whether his wife, the joint proprietor of the Property, was aware of and concurred in the proceedings. The Applicant and his wife, Linda Meade McDonald replied by 1 December

2018 stating that as the co-proprietor of the Property, she has no interest in the proceedings and that any sums claimed in the application are due solely to Mr Ian McDonald. The Applicant also confirmed that as at 1 December 2018 the increased figure for rent arrears was £11,000.00. The Applicant also attached a chain of emails which he had forgotten to attach with the Application Form.

- 1.4. On 7 January 2019, the Applicant submitted proof of service of the Notices to Quit and Section 33 Notices, proof of service of the Section 11 Notice and an updated rent arrears statement to 1 January 2019, showing arrears of £12,100.00.
- 1.5. On 17 January 2019, the Application was accepted for determination and a Case Management Discussion (“CMD”) was thereafter fixed for 13 March 2019 at 1400 in George House, 126 George Street, Edinburgh, EH16 6TA.
- 1.6. On 19 February 2019 parties were notified by letter of the date, time and place of the CMD and told that they were required to attend. Parties were also advised in the same letter that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the Application, which may involve making or refusing an eviction order. If parties do not attend the CMD this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Respondent was afforded the opportunity to return written representations to the tribunal’s offices by 7 March 2019.
- 1.7. The Application paperwork and notification of the date, time and place of the CMD were personally served on the Respondents on 20 February 2019.
- 1.8. On 7 March 2019 the tribunal issues Directions to the Applicant ordering him to do certain things by the close of business on 12 March 2019. A copy was sent to the Respondents for information.
- 1.9. On 8 March 2019, the Respondents submitted written representations by email. The representations stated that there was an attachment but there was no attachment to the email. The tribunal’s administration replied to the Respondents to advise that the attachment was missing, to respond to other procedural questions that the Respondents had raised in their email and to provide an Accessibility Form. The Respondents’ written representations were redacted to remove sensitive personal information and crossed over to the Applicant.

1.10. On 12 March 2019, the Applicant submitted documents, including an updated rental statement to 1 March 2019, showing rent arrears of £13,491.96; and a photographic record of damage which did not appear to be relevant to either Application.

## **2. Case Management Discussion (“CMD”): 13 March 2019 at 1400 at George House, 126 George Street, Edinburgh**

2.1. A CMD took place on Wednesday 13 March 2019 at 1400h at George House, 126 George Street, Edinburgh.

2.2. The Applicant attended, together with Mr Leslie, Solicitor, Leslie & Co, Solicitors, 2 Millar Crescent, Edinburgh, EH10 5HW. The Applicant advised that Mr Leslie was instructed to represent him and should be added as his Representative.

2.3. The Respondents both attended.

### **2.4. Summary of Parties’ submissions**

#### **2.4.1. Applicant’s submissions**

2.4.2. The Applicant seeks the Respondent’s eviction in terms of Section 33 of the Housing (Scotland) Act 1988 and Rule 66 of the 2017 Rules of Procedure.

2.4.3. He relies on the AT5 Notices, the Short Assured Tenancy agreement, the Section 33 notices and Notices to Quit, with proof of service and the Section 11 Notice to the Council, all as noted above.

#### **2.4.4. Respondents’ Submissions**

2.4.5. The Respondents both made submissions about various matters relating to the Property, in particular a number of repairs issues which they said were outstanding at the Property. The Second Respondent referred to a meeting which had taken place with the Applicant’s agents at the ESPC offices at some time in July 2018, at which time both Respondents attended, accompanied by a lady called Liz Law from Your Home. The second Respondent stated that the purpose of the meeting was to discuss rent arrears and repairs issues. The Respondents

accepted that the last rent payment they made to the Applicant was £1,100.00 in on 2 July 2018 and the rent arrears as shown on the most up to date rent statement dated 1 March 2019 were accepted as “factually correct”. The majority of the Respondents’ submissions were either potentially relevant to a defence in the civil application for payment of rent arrears (CV/18/2596) or not relevant to either Application. The Respondents did not make any submissions in relation to any defence to the eviction action in terms of Section 33 of the 1988 Act.

### **3. Discussion**

3.1. The tribunal chair told parties about the procedure following an order being made and advised parties of the right to seek permission to appeal on a point of law within 30 days.

### **4. The tribunal makes the following findings-in-fact:**

4.1. There was a short assured tenancy between the parties for the initial period 18 May 2015 to 19 November 2015.

4.2. Thereafter the tenancy continued by tacit relocation on a monthly basis and could be terminated by the Applicant giving no less than two months’ notice to the Respondents.

4.3. The short assured tenancy reached its end on 19 June 2018 by service on behalf of the Applicants on the Respondents, on 18 April 2018, of Notices to quit dated 18 April 2018, notifying the Respondents that the tenancy would reach its termination date as at 19 June 2018.

4.4. Tacit relocation is no longer operating.

4.5. No further contractual tenancy is for the time being in existence.

4.6. Section 33 notices were served on behalf of the Applicants on the Respondents on 18 April 2018, notifying the Respondents that the Applicants required vacant possession as at 19 June 2018.

4.7. The Applicant has given to the Respondents at least two months’ notice stating that they require possession of the Property.

## **5. Findings in Fact and Law**

5.1. The tribunal is satisfied that the requirements of Section 33 of the 1988 Act are met and therefore must make 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.



**Susanne L M Tanner Q.C.**  
**Legal Member/Chair**

**13 March 2019**