



**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/19/3526

**Re: Property at 14 Hawthorn Crescent, Mayfield, Dalkeith, Midlothian, EH22
5AF (“the Property”)**

Parties:

**Mrs Sara Mackenzie, 31A North Bridge Street, Bathgate, West Lothian, EH48
4PJ (“the Applicant”)**

**Ms Spiwe Koga, 14 Hawthorn Crescent, Mayfield, Dalkeith, Midlothian, EH22
5AF (“the Respondent”)**

Tribunal Members:

Fiona Watson (Legal Member)

Decision (in absence of the Applicant)

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

- Background
- 1. An application dated 31 October 2019 was submitted to the Tribunal under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondent upon termination of a short assured tenancy agreement.
- The Case Management Discussion
- 2. A Case Management Discussion (“CMD”) took place on 14 January 2020. The Respondent was personally present. There was no appearance by or on behalf of the Applicant. The Tribunal clerk called the office of Gilson Gray LLP, the Applicant’s agents to identify if they intended to appear and was advised that they had not diarised the date of the CMD and accordingly no one would be appearing at the allocated time. They did wish to seek the order

but could not appear. The Tribunal was satisfied that the Applicant had been duly notified of the date and time of the CMD by way of letter dated 10 December 2019 and that the CMD could proceed in the Applicant's absence.

3. The Respondent advised that she had received the repossession notices served in her, asking her to remove from the property in October. She had asked the Applicant for more time but this had been refused. She had sought advice from the Local Authority in relation to her re-housing options and had been advised that the Local Authority could not assist her until a repossession order was granted by the Tribunal. Accordingly, the Respondent indicated that the granting of the Order would assist her in being rehoused by the Local Authority.

- Findings in Fact

4. The Tribunal made the following findings in fact:

- (i) The parties entered into a Short Assured Tenancy Agreement ("the Agreement") which commenced 27 October 2016. The Agreement stated that the commencement date was 27 October 2016 and the termination date was 26 April 2017 (said day included). Thereafter, if the Agreement is not brought to an end by either party it will run on a monthly basis until ended by either party;
- (ii) A Notice to Quit and notice under section 33 of the 1988 Act were served on the Respondent on 19 August 2019 by recorded delivery post;
- (iii) The Notice to Quit and notice under section 33 of the 1988 Act required the Respondent to remove from the Property by 26 October 2019;
- (iv) The Respondent had failed to remove from the Property and continued to reside therein.

- Reasons for Decision

5. The Tribunal was satisfied that the terms of section 33 of the Housing (Scotland) 1988 Act had been met: namely that the tenancy had reached its end; tacit relocation was not operating; a notice had been served in terms of that section giving at least 2 months' notice; and no further contractual tenancy was in existence. Accordingly, the Applicant was entitled to the Order for Repossession as sought. The Tribunal also took into account the submissions of the Respondent, that it would assist her in being rehoused by the Local Authority if the Order was granted.

- Decision

6. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

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.

F Watson

Legal Member/Chair

Date

14/01/2020