



**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”)**

**Chamber Ref: FTS/HPC/EV/18/0533**

**Re: Property at 1/1 Restalrig Circus, Edinburgh, EH7 6HJ (“the Property”)**

**Parties:**

**Mrs Veronica Kane, 29 Kaimes Road, Edinburgh, EH12 6JS (“the Applicant”)**

**Mr Peter Moncur, 1/1 Restalrig Circus, Edinburgh, EH7 6HJ (“the Respondent”)**

**Tribunal Members:**

**Sarah O’Neill (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the applicant.**

**Background**

An application was received on 5 March 2018 under rule 66 of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”) seeking recovery of possession of the property under a short assured tenancy by the applicant against the respondent.

The application included: the tenancy agreement; a copy of the AT5; a copy of the notice required under section 33 of the 1988 Act (‘the section 33 notice’); and a copy of the Notice to Quit, together with a letter from the respondent dated 24 November 2017 stating that he had received the Notice to Quit and the section 33 notice.

Notice of the case management discussion, together with the application papers and guidance notes, had been served on the respondent by sheriff officers on behalf of the tribunal on 18 May 2018.

## **The Case Management Discussion**

A case management discussion was held on 21 June 2018 at George House, 126 George Street, Edinburgh EH2 4HH. The applicant was present at the hearing and gave evidence on her own behalf. Her husband Mr Paul Kane, who is joint owner of the property, was also present at the hearing. The respondent was present, and gave evidence on his own behalf.

The applicant confirmed that she was seeking an order for possession against the respondent under section 33 of the 1988 Act.

The respondent confirmed that he did not wish to challenge the granting of an order. He said that he had a new tenancy in place at another address, and expected to move in there next week.

## **Findings in Fact**

The tribunal made the following findings in fact:

- The applicant jointly owns the property with her husband, Paul Kane. With the application papers was a letter of consent signed by Mr Kane dated 21 March 2018, confirming that he consented to the tenancy agreement signed by the applicant, and to the making of the tribunal application.
- There was a tenancy in place between the applicant and the respondent. The tenancy commenced on 7 May 2015 for an initial period of 12 months until 6 May 2016. It then continued on a monthly basis thereafter.
- The AT5 form was in the prescribed format and had been signed by the parties on 6 May 2015. The tenancy agreement had been signed by the parties on the same date. The tribunal was therefore satisfied that there was a short assured tenancy in place between the parties.
- The Notice to Quit and section 33 notice both contained the prescribed information and both were dated 24 November 2017. These notices stated that the applicant required vacant possession of the property on or before 31 January 2018.
- There was no evidence before the tribunal that the Notice to Quit and section 33 notice had been served by sheriff officers or by recorded delivery. There was a letter with the papers addressed to Mr Kane dated 24 November 2017 and signed by the respondent, stating that he acknowledged receipt of the Notice to Quit and section 33 notice. The respondent confirmed to the tribunal at the hearing that he had signed this letter, and had received the notices.

## Reasons for Decision

Section 33 of the 1988 Act requires the tribunal to grant an order for possession under a short assured tenancy where: the tenancy has reached its end; tacit relocation is not operating; no further contractual tenancy for the time being is in existence; and the landlord has given notice to the tenant that they require possession of the house. The tribunal noted that there was no evidence before it of valid service of the Notice to Quit and section 33. Bearing in mind the overriding objective of the tribunal, however, and in particular avoiding delay, it determined that in all the circumstances of the case that it was satisfied that the respondent was aware of the notices. He had appeared at the hearing, and had signed a letter stating that he had received these, which he confirmed to the tribunal. He accepted that he had received the notices, and had secured a new property to move into. There was accordingly no benefit to either party in requiring the applicant to re-serve the notices by sheriff officer or recorded delivery.

The tribunal is therefore satisfied that the requirements of section 33 have been met. The tribunal is therefore required to grant an order for possession under section 33 of the 1988 Act.

## Decision

The tribunal grants an order in favour of the applicant against the respondent for recovery of 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.**

Sarah O'Neill

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Legal Member/Chair

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Date

21/6/18