

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**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/18/2879**

**Re: Property at 1/3 New Mart Gardens, Edinburgh, EH14 1TZ (“the Property”)**

**Parties:**

**Lowther Homes Limited, 25 Cochrane Street, Glasgow, G1 1HL (“the Applicant”)**

**Mr Ian Auld, 1/3 New Mart Gardens, Edinburgh, EH14 1TZ (“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 the application should be granted without a hearing and made an Order for Possession of the Property.**

**Background**

By application, received by the Tribunal on 25 October 2018, 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 copy of a Short Assured Tenancy Agreement, commencing on 7 July 2016 and, if not ended on 13 January 2017, continuing on a monthly basis thereafter. The application was also accompanied by copies of a Form AT5 Notice dated 6 July 2016, a Notice to Quit, dated 19 July 2018, requiring the Respondent to vacate the Property by 13 September 2018, and a Notice given under Section 33 of the 1988 Act, dated 19 July 2018, requiring the Respondent to remove from the Property on or before 25 September 2018, with proof of service of the Notice to Quit and Section 33 Notice by sheriff officer on 23 July 2018.

On 21 January 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 to the Tribunal by 8 February 2019. The Respondent made no written representations.

### **The Case Management Discussion**

A Case Management Discussion was held at George House, 126 George Street, Edinburgh on the afternoon of 13 February 2019. The Applicant was represented by Neil Matheson of TC Young, solicitors, Edinburgh.

The Respondent told the Tribunal that he was unaware of the implications of a Short Assured Tenancy and in particular of the fact that his landlords could recover possession at any time on serving the required Notices.

The Applicant's representative asked the Tribunal to make the Order without a hearing.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal Housing and Property Chamber (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 decide the application without a hearing.

Section 3 of the 1988 Act provides that the Tribunal shall make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the 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 from its terms that the tenancy had reached its end, that, as a result of service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy for the time being in existence and that the Notice required by Section 33 of the 1988 Act had been given. Accordingly, all the requirements of Section 33 of the 1988 Act had been met and the Tribunal was bound to make the Order for Possession.

The Tribunal noted that the Respondent had stated that he was unaware of the implications of a Short Assured Tenancy, but the Legal Member explained that he had received a notice at the outset saying that it was to be a Short Assured Tenancy. That Notice set out that the landlord had special rights to repossess the house by giving a valid Notice to Quit and at least 2 months' notice of the intention to repossess the Property. The Legal Member advised the Respondent that all the necessary procedures for recovery of possession had been correctly followed and that, accordingly, the Tribunal must grant the Order for Possession.

### **Decision**

The Tribunal determined that the application should be granted 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.

G Clark

Legal Member/Chair

15 February 2019

Date