

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

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)**

**Chamber Ref: FTS/HPC/EV/19/0161**

**Re: Property at 171-3 Crewe Road West, Edinburgh, EH5 2PF (“the Property”)**

**Parties:**

**Mr Douglas Peace, Mrs Joanne Peace, 13 Forthview Road, Edinburgh, EH4 2DE (“the Applicants”)**

**Mr Shikhar Dhakal, Mrs Tracy Dhakal, 171-3 Crewe Road West, Edinburgh, EH5 2PF (“the Respondents”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Decision (in absence of the Respondents)**

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

**Background**

1. By application dated 15 January 2019 the Applicants applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for possession of the property in terms of Section 33 of the 1988 Act.. The Applicants lodged various documents in support of the application including copy tenancy agreement dated 24 April 2013, copy AT5 Notice dated 19 April 2013, copy Notice to Quit dated 21 September 2018 together with Royal Mail track and trace dated 22 September 2018, copy notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 (“the 2003 Act”) and Notice in terms of Section 33 of the 1988 Act.
2. A copy of the application and supporting documentation was served on the Respondents by Sheriff Officer on 22 March 2019. Both parties were notified

that the application would call for a case management discussion ("CMD") on 12 April 2019 at 11.30 am at Riverside House, 502 Gorgie Road, Edinburgh.

3. The application called before the Legal Member of the Tribunal on 12 April 2019 at 11.30am. The Applicant Mrs Joanne Peace attended on her own behalf and on behalf of the 2<sup>nd</sup> Applicant, Douglas Peace. The Respondents did not attend and were not represented. No written representations were received from either party in advance of the CMD.

### **Case Management Discussion**

4. Mrs Peace advised the Legal Member that she has been in contact with the Respondents. They advised her that they do not intend to contest the application or attend the CMD. She confirmed that they are still in occupation of the property. She referred the Legal Member to the Notices which were served on the Respondents in advance of the application being lodged. She confirmed that the Notice to Quit and Section 33 Notice were both served by recorded delivery on the Respondents on 22 September 2018 and referred to the Royal Mail receipt and track and trace report as evidence of this. She confirmed that she is seeking an order for possession of the property.

### **Findings in Fact**

5. The Applicants are the owners and landlords of the property.
6. The Respondents are the tenants of the property by virtue of a short assured tenancy agreement dated 24 April 2013.
7. On 22 September 2018 the Applicants served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents. . In terms of the notices the Respondents were called upon to vacate the property on 30 November 2018.
8. The Applicants have issued a Notice to City of Edinburgh Council in terms of Section 11 of the 2003 Act.
9. The Respondents remain in occupation of the property and have failed to vacate same.

### **Reasons for decision**

10. The Respondents occupy the property in terms of a short assured tenancy. The initial term of the tenancy is 29 April 2013 to 30 October 2013 and monthly thereafter. An AT 5 Notice dated 19 April 2013 was issued in advance of the short assured tenancy being signed. A valid short assured tenancy agreement exists in terms of Section 32 of the 1988 Act.

**11.** On 22 September 2018 the Applicants served a valid Notice to Quit and Section 33 Notice on the Respondents. A notice in terms of Section 11 of the 2003 Act was issued to the relevant local authority.

**12.** The Legal Member is satisfied that the requirements of section 33 of the 1988 Act have been met. The Legal Member is also satisfied that the Respondents remain in occupation of the property. The Legal member determined that an order for possession of the property should be granted.

### **Decision**

**13.** The Legal Member determined that an order for possession of the property in favour of the Applicants should be made.

### **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.**

Ms Josephine Bonnar

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**Josephine Bonnar, Legal Member**

**12 April 2019**