



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/21/1389

**Re: Property at 14 F 7 Hawkhill Close, Edinburgh, EH7 6AL
 (“the Property”)**

Parties:

**Mr Zahid Khan, 15 Willowbrae Avenue, Edinburgh, EH8 7HB
 (“the Applicant”)**

**TC Young Solicitors, 7 West George Street, Glasgow, G2 1BA
 (“the Applicant’s Representative”)**

**Mr Ratal Klocek and Mrs Aneta Klocek, 14 F 7 Hawkhill Close, Edinburgh, EH7 6AL
 (“the Respondent”)**

Tribunal Members:

**Ms Susanne L M Tanner Q.C. (Legal Member)
 Ms Janine Green (Ordinary Member)**

Decision (in absence of Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) (i) 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 Respondent two months’ notice stating that they require possession of the house; (ii) that it was reasonable to make an order for possession in the circumstances of the case; and (iii) made an order for possession in terms of Section 33 of the 1988 Act.

Statement of Reasons

1. The Applicant's Representative made an application to the tribunal on 9 June 2021 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").
2. The Applicant seeks the Respondents' eviction from the Property under Section 33 of the 1988 Act (possession on termination of a short assured tenancy).
3. The Applicant's Representative lodged:
 - 3.1. A paper apart for section 5, Possession/Eviction grounds;
 - 3.2. Copy of a short assured tenancy agreement;
 - 3.3. Copy of an AT5 notice;
 - 3.4. Copy of notice to the Respondent under Section 33(1)(d) of the 1988 Act, notifying the Respondent that the Applicant required possession of the Property as at 21 March 2021;
 - 3.5. Copy Notice to Quit dated 23 September 2020, notifying the Respondents that they were required to remove from the Property with effect from 21 March 2021;
 - 3.6. Copy proof of service of the Section 33 Notice and Notice to Quit by Sheriff Officers;
 - 3.7. a copy of the Section 11 Notice which was sent to the local authority with proof of service; and
 - 3.8. Rent statement.
4. The tribunal's administration obtained the title sheet to the property which shows that the Applicant is the registered proprietor of the Property.
5. On 23 June 2021, the Application was accepted for determination and a Case Management Discussion ("CMD") was thereafter fixed for 13 August 2021 at 1000 by teleconference.
6. On 12 July 2021, 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 Respondents were afforded the opportunity to return written representations to the tribunal's offices by 2 August 2021.

7. The Application paperwork and notification of the date, time and place of the CMD was personally served on the Respondents by Sheriff Officers.
8. The Respondents did not submit any defence or written representations or make any contact with the tribunal's administration.

9. Case Management Discussion ("CMD"): 13 August 2021 at 1000 by teleconference

9.1. Ms Kirsty Morrison, solicitor, from the Applicant's Representative attended on behalf of the Applicant.

9.2. The Respondents failed to attend the CMD.

9.3. The tribunal was satisfied that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the party present and all the material before it.

9.4. Ms Morrison referred to her written submissions which stated that on 24 September 2020 the Applicant served upon the Respondents and Notice to Quit. In terms of the Notice to Quit the Applicant gave notice to the Respondents that they were required to remove from the Property on or before 21 March 2021. Further on 24 September 2020, the Applicant served on the Respondent Notice under Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that they required possession of the Property as at 25 March 2021. Ms Morrison submitted that the Short Assured Tenancy between the Applicant and the Respondents has reached its end as at 21 March 2021. Tacit relocation is not operating. No further contractual tenancy is in existence. The Applicant has complied with the terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 and in the circumstances it is reasonable that an order for possession should be granted.

9.5. Ms Morrison advanced additional oral submissions in respect of the requirement of reasonableness. She stated that the primary reason why the

Applicant requires possession of the property and she submits that it is reasonable to grant an eviction order is that the rent arrears are currently standing at £17,600. The Respondents have been in arrears continuously since March 2019. She referred to the rent statement lodged with the Application and the updated rent statement lodged in respect of the conjoined civil application CV/21/1390. The last payment received was in November 2020 and nothing has been paid since then. The Respondents have not offered any explanation to the Applicant for non-payment of rent. The Respondent are believed to be unemployed and are not believed to have any dependents living at the Property. The Applicant relies on the rental income received to pay the mortgage over the Property. The significant arrears balance has put the applicant into serious financial difficulty. He is unable to maintain mortgage repayments. He has been written to by his lender and told that he is at risk of the Property being repossessed. There would be serious prejudice to the Applicant were the order for possession not granted. The Respondents have been given notice and have chosen not to participate and lodge any written representations. On the basis of the representations, Ms Morrison invited the tribunal to find that it was reasonable to make an order for possession and to grant the same.

- 9.6. In response to questions from the tribunal Ms Morrison indicated that she does not know what the circumstances were giving rise to the payment of £800.00 in November 2020. The Applicant has made various attempts to contact the Respondents regarding their arrears and their intention to vacate the property but they have offered no explanation. She does not know whether the Applicant has managed to make contact with them since November 2020. The firm has never had any contact with the Respondents and they have made no contact with the tribunal since the proceedings were raised.

10. The tribunal makes the following findings-in-fact:

- 10.1. There was a short assured tenancy between the parties for the initial period 21 November 2017 to 21 November 2018.
- 10.2. Thereafter the tenancy continued by tacit relocation on a two monthly basis and relocated until 21 March 2021.
- 10.3. The short assured tenancy reached its end on 21 March 2021 by service on behalf of the Applicant on the Respondents, on 24 September 2020, of a Notice to Quit, notifying the Respondents that the tenancy would reach its termination date as at 21 March 2021.

- 10.4. Tacit relocation is no longer operating;
- 10.5. No further contractual tenancy is for the time being in existence.
- 10.6. A Section 33 notice was served on behalf of the Applicant on the Respondents on 24 September 2020, notifying the Respondent that the Applicant required vacant possession as at 21 March 2021.
- 10.7. The Applicant has given to the Respondents at least six months' notice stating that he requires possession of the Property.
- 10.8. The Application to the tribunal was made on 9 June 2021.
- 10.9. The Respondents had £16,000 of rent arrears as at the date of the Application and £17,600 as at the date of the CMD on 13 August 2021.
- 10.10. The Respondents have been in rent arrears since 2 March 2019 and the last payment made was £800.00 on 9 November 2020.
- 10.11. The Respondents have not made any rent payments or payments towards rent arrears since the Application was made or provided any defence to the Application.
- 10.12. The Respondents are unemployed and have no dependents.
- 10.13. The Applicant is in financial difficulties and at risk of repossession of the Property as a result of the Respondents' rent arrears.

11. Findings in Fact and Law

- 11.1. The tribunal is satisfied that the requirements of Section 33 of the 1988 Act are met.
- 11.2. The tribunal is satisfied that in all the circumstances and on the basis of the findings of fact, it is reasonable and to 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.

S. T

13 August 2021

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