



**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/20/2570

Re: Property at 77/1 High Street, Dalkeith, EH22 1JA (“the Property”)

Parties:

Ms Donna Moffat, Hartford House, 5 Waverley Road, Eskbank, EH22 3DJ (“the Applicant”)

Mr Mark Sutherland, 77/1 High Street, Dalkeith, EH22 1HZ (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

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

Background:

The application for an order for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988 was made on 10 December 2020. The Applicant's representative Ms Ridley from Blacklocks lodged with the application the Short Assured Tenancy Agreement commencing on 1 April 2016 as well as a copy of the AT5, the Notice to Quit dated 8 January 2020 and S 33 Notice dated 8 January 2020 with recorded delivery slip and signed for receipt dated 31 January 2020. The bundle also contained the S 11 Notice to the Local Authority under the Homelessness etc (Scotland) Act 2003 some text messages exchanged between the parties in January 2020.

The documents are referred to for their terms and held to be incorporated herein.

A Case Management Discussion (CMD) was scheduled for 3 March 2021 and both parties notified of the date and time. Service on the Respondent by Sheriff Officers was confirmed to have taken place on 1 February 2021. The intimation to the parties included the information that the Tribunal may do anything at a Case Management

Discussion which it may do at a hearing, including making a decision on the application.

The Respondent had been given the 14 days notice required in Rule 24 of the Rules of Procedure.

The Case Management Discussion:

The Respondent did not attend. Ms Ridely, the Applicant's representative attended via telephone conference. On behalf of the Applicant she moved the application.

She confirmed that the Respondent had not been in contact at all and that a partial housing benefit payment for the property had been received from the local authority on 22 February 2021, which indicated that the Respondent had not moved despite the notice having been served and despite having stated in the text messages of 28 January 2020 he would return the keys after 90 days from the notice being sent out.

The Respondent did not attend and made no representations at the CMD.

Findings in Fact:

1. The Applicant and the Respondent entered into a Short Assured Tenancy on 1 April 2016 for an initial period of 12 months and from month to month thereafter in terms of Clause 1 and the Schedule of the Tenancy Agreement.
2. Document AT5 was receipted and signed by the Respondent on 1 April 2016
3. The notice period stated in Clause 1 of the Tenancy Agreement is stated as 1 month.
4. Notice to Quit was served on the Respondent recorded delivery and signed for on 31 January 2020 advising of the termination of the tenancy on the termination date of 1 April 2020.
5. Tacit relocation is not operating.
6. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent recorded delivery and signed for on 31 January 2020 advising of the intention to repossess the premises on 1 April 2020.
7. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
8. The Respondent continues to occupy the property at the date of the CMD on 3 March 2020.

Reasons for the Decision:

The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

The Tribunal did not consider that there was any need for a hearing as the essential facts of the case were sufficiently evidenced to make the relevant findings in fact to determine the case.

The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information given at the CMD.

In terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its term;
2. That tacit relocation is not operating;
3. That no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
4. That the landlord has given to the tenant notice that he requires possession of the house.

The Tribunal was satisfied on the basis of the documents lodged that that all requirements for recovery of possession in terms of the Housing Scotland Act 1988 had been complied with.

A Notice to Quit and a Notice in terms of S 33 (1) (d) of the Housing (Scotland) Act 1988 had been served on the Respondent.

The Tribunal is satisfied that these gave the required 2 months notice in terms of S33 of the Act and the required 1 month notice in the Notice to Quit in terms of clause 3 of the lease.

The Tribunal concluded it was not necessary to fix a hearing as the Respondent had not attended the CMD and opposed the order being granted and as the documents lodged evidenced sufficiently the matters required to determine whether the legal tests for an order in terms of S 33 of the Housing (Scotland) Act 1988 are met.

If the tests of S 33 (1) of the Housing (Scotland) Act 1988 are met there is no discretion for the Tribunal and the order must be granted. The Coronavirus (Scotland) Act 2020 does not apply to this case as the Notices were served prior to 7 April 2020 when the Act came into force.

The tenancy document and AT5 document show that the tenancy is a Short Assured Tenancy which has reached its ish. The landlord had served a notice to quit with the required notice period for the ish on 1 April 2020 and thus tacit relocation does not operate. The landlord had served on the Respondents a notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 with the required 2 months notice period.

The Tribunal has no discretion in the matter. The conditions for an order for possession in terms of S 33 (1) of the Housing (Scotland) Act 1988 have been evidenced by the Applicant in the documentation lodged. Thus the Tribunal grants the order for possession as per the application.

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.



Petra Hennig McFatridge
Legal Member

3 March 2021
Date