



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 33(1) of the Housing
(Scotland) Act 1988**

Chamber Ref: FTS/HPC/EV/18/0559

Re: Property at 100 Jardine Place, Bathgate, EH48 4GU (“the Property”)

Parties:

**R & L McCulloch, c/o Dem-Master Demolition, Pottishaw Place, Whitehill Place,
Bathgate, EH48 2EN (“the Applicant”)**

**Mr Norman James Hutchens and Mrs Lorna Hutchens, 100 Jardine Place,
Bathgate, EH48 4GU (“the Respondent”)**

Tribunal Members:

George Clark (Legal Member)

Decision

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 terms of Section 33(1) of the Housing (Scotland) Act 1988

- **Background**

The Applicant let the Property to the Respondent by means of a Short Assured Tenancy, which commenced on 2 August 2013.

The period of the tenancy was stated to be 6 months and, if neither party terminated the lease at the expiry of that period, it continued on a month to month basis until terminated by 2 months’ notice given by either party to the other.

The Applicant served a Notice to Quit dated 21 November 2017, together with a Notice given under Section 33 of the Housing (Scotland) Act (“the Act”).

The Notice to Quit required the Respondent to remove from the Property by 22 January 2018.

The Respondent remains in occupation of the Property.

The Applicant applied to the Tribunal on 6 March 2018 for an Order for Possession of the Property.

- The Case Management Discussion

A Case Management Discussion was held at George House, 126 George Street, Edinburgh on the afternoon of 8 May 2018. The Applicant was represented by Jody McAdam, the Property Manager of Castlebrae Sales and Lettings Limited, the Applicant's agents. The Respondent, Mr and Mrs Hutchens, attended the Case Management Discussion.

The Applicant's representative told the Tribunal that she knew that the Respondent had been working very hard to secure alternative accommodation, initially in the private sector and latterly with West Lothian Council. She understood that the Council had identified a suitable property and that it had been assessed by an occupational therapist as suitable to the Respondent's needs. It was, she understood, just a matter of waiting for a date on which it would become available after works had been carried out.

The Respondent, Mrs Hutchens, told the Tribunal that the Council had told her the house would be ready in April, but it had not been. She had now been told Thursday 10 May as a date on which the Council would get the keys back (presumably from those carrying out the work at the property). She stated that she needed to be able to stay in the Property until the new house was ready, but she readily accepted that the Applicant wanted his property back.

The Applicant's representative pointed out that the Applicant had shown considerable patience in not seeking a Possession Order as soon as the period of the Notice to Quit had expired, but he now needed to recover possession as soon as possible. It was understood that if an Order was made, the Respondent's application for local authority housing would become a priority of the Council. The Applicant's representative was concerned that any further delay in granting the Order might affect that priority status.

The Respondent accepted that the Applicant had an absolute right to recover possession as it was a Short Assured Tenancy and that all of the necessary Notices had been given.

- Findings in Fact

The tenancy is a Short Assured Tenancy.

The Tribunal has seen the Form AT5 which was acknowledged by the Respondent prior to the commencement of the tenancy.

The Applicant served a Notice to Quit dated 21 November 2017 and a Notice under Section 33 of the Act stating that he required possession of the Property.

The Tribunal has seen proof of receipt by the Respondent of both Notices. The Notices required the Respondent to vacate the Property by 22 January 2018, so the period of 2 months required under Section 33(2) of the Act has been complied with.

- Reasons for Decision

The Tribunal sympathised with the position in which the Respondent, Mrs Hutchens found herself. She required accommodation which was suitable to her needs as a wheelchair user and the initial indication that a suitable local authority house would be available for her in April had not come to fruition and she was still waiting for the house to be made ready. The view of the Tribunal was, however, that the Applicant had fulfilled all of the requirements set out in Section 33 of the Act and that it had no option but to grant the Order sought. The Order would not come into effect for a period of 31 days after it was issued and the Tribunal hoped that this would be a sufficient period within which the Respondent would be able to move into the local authority house that had been identified as suitable for her needs. Accordingly, the Tribunal, having regard to the facts which were not disputed by the Parties, decided to exercise its power under Regulation 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 to make a Decision rather than refer the case to a hearing.

Decision

The Tribunal decided to grant the Application and 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.

George Clark

Legal Member/Chair

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8 May 2018
Date