



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 66 of the Procedure Rules.**

**Chamber Ref: FTS/HPC/EV/20/0279**

**Re: First floor flat, 97 Adamswell Street, Glasgow, G21 4DD ("the Property")**

**Parties:**

**Flemington & Co, c/o, Flemington House, 110 Flemington Street, Glasgow, G21 4BF ('the Applicants')**

**Stephen Moffat, solicitor, Anderson Strathern, LLP, George House, 50 George Square, Glasgow, G2 1EH ('The Applicants' Representative')**

**Mr Lukasz Borczek, First floor flat, 97 Adamswell Street, Glasgow, G21 4DD ('the Respondent')**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')**

**Tribunal Member: Jacqui Taylor (Legal Member)**

## **Background**

1. The Applicants applied to the Tribunal for eviction/ possession of the Rented Property under section 33 of the Housing (Scotland) Act 1988, in terms of Rule 66 of the Procedure Rules. The application was dated 27<sup>th</sup> January 2020. The application states:

'The Applicant is seeking possession based upon the provision of section 33 of the Housing (Scotland) Act 1988. Possession is sought on the following basis:-

1. The short assured tenancy has reached its ish.
2. Tacit relocation is not operating.
3. There is no further contractual tenancy for the time being in existence and;
4. The claimant has given the respondent notice stating that they require repossession of the house.

2. Documents lodged with the Tribunal were:-

2.1 The Tenancy Agreement dated 11<sup>th</sup> June 2014 and 20<sup>th</sup> May 2014.

2.2 Form AT5 dated 9<sup>th</sup> May 2014.

2.3 A copy of the Notice to Quit dated 21<sup>st</sup> May 2019 giving the Tenant formal notice to quit the Property by 30<sup>th</sup> November 2019.

2.4 A copy of the Section 33 Notice to the Tenant dated 21<sup>st</sup> May 2019 advising him of the Landlords' requirement to possess the Property as at 30<sup>th</sup> November 2019.

2.5 Certificate of Intimation by Andrew McKelvie, Sheriff Officer dated 28<sup>th</sup> May 2019 confirming personal service on the Respondent of the Notice to Quit, section 33 Notice and AT6.

2.6 Section 11 Notice addressed to Section 11 Team, Glasgow Homelessness Partnership, 31 Stockwell Street, Glasgow, G1 4EZ.

2.7 Certificate of intimation by Michael Ritchie, Solicitor, Glasgow dated 27<sup>th</sup> January 2020 confirming that the section 11 notice was intimated to Glasgow Homelessness Partnership on 27<sup>th</sup> January 2020.

### **3. Case Management Discussion**

This case called for a Case Management Discussion (CMD) Conference call on at 2pm on 13<sup>th</sup> July 2020.

The CMD started at 2.10 pm. Stephen Moffat, Solicitor, attended on behalf of the Applicants. The Respondent did not attend and was not represented. The Tribunal Administration sent the Respondent a letter by email on 11<sup>th</sup> June 2020, to his verified email address, advising him of the CMD. The Tribunal Administration sent the Respondent a further email on 10<sup>th</sup> July 2020. The Tribunal was satisfied that the requirements of Tribunal Rule 29 had been met and proceeded with the CMD. No written responses had been received from the Respondent.

### **4. The Tribunal identified with the Applicants' representative the following agreed facts:**

4.1 The Applicants are Landlords of the Property. They are owners of the Property and their title is registered in the Land Register of Scotland under title number GLA202626.

4.2 The Respondent is Tenant of the Property in terms of the Short Assured Tenancy between the parties. The term of the Tenancy was from 1<sup>st</sup> June 2014 to 30<sup>th</sup> November 2014. The lease continued thereafter by tacit relocation. There was no further contractual tenancy in place.

4.3 The ish date of the lease was 30<sup>th</sup> November 2019.

### **5. Requirements of Section 66 of the Procedure Rules.**

**(a)** The Tribunal confirmed that the application correctly detailed the requirements of section 66 of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlord.
- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenant.

**(b)** The Tribunal confirmed that the application had been accompanied by the documents specified in Section 66(b) of the Procedure Rules:

- (i) The Tenancy Agreement.
- (ii) The Notice that the tenancy is a short assured tenancy.
- (iii) The notice given to the tenant under section 33(1)(d) of the 1988 Act.
- (iv) The notice to quit served by the Landlords on the Tenant.
- (v) The required notice giving Glasgow City Council notice of the proceedings under section 11 of the Homelessness etc Scotland Act 2003.

The Applicants exhibited the certificate of intimation by Andrew McKelvie, sheriff officer, posting dated 28<sup>th</sup> May 2019 in respect of service of the Notice to Quit, section 33 notice and the AT6 which had been intimated to the Respondent on 28<sup>th</sup> May 2019. The Applicants also exhibited the certificate of intimation by Michael Ritchie, Solicitor, certifying that he had intimated the section 11 notice on the Glasgow Homelessness Partnership, Glasgow.

**(c)** The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords as required by Section 66(c) of the Procedure Rules.

## **6. Requirements of Section 33 of the Housing (Scotland) Act 1988**

The Applicants confirmed that there is no further contractual tenancy agreement between the parties.

The tenancy commenced on 1<sup>st</sup> June 2014 and ended on 30<sup>th</sup> November 2014 and continued thereafter by tacit relocation. Notice to Quit and section 33 notice had been served on the Tenant by sheriff officer. Both documents required the Tenant to vacate the Property on 30<sup>th</sup> November 2019, being the end of the tenancy. The required two months period of notice had been provided.

The Tribunal were satisfied that the requirements of section 33 have been met, namely that:

- (i) The Short assured Tenancy has reached its end.
- (ii) That tacit relocation is not operating.
- (iii) That no further contractual tenancy is in existence.
- (iv) That the Landlord has given to the Tenants notice stating that he requires possession of the Property. In terms of section 33(2) the period of notice is two months.

## **7. Coronavirus (Scotland) Act 2020**

The Tribunal acknowledged that Notice to Quit had been served on the Respondent prior to the commencement date of the Coronavirus (Scotland) Act 2020 (7<sup>th</sup> April 2020) and therefore the provisions of the Coronavirus (Scotland) Act 2020 do not apply to this application.

## **8. Decision**

**The Tribunal determined that the requirements of section 33(1) of the Housing (Scotland Act) 1988 had been complied with and made an order for possession of the Property.**

## **9. 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.**

Jacqui Taylor

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**Legal Member**

**13<sup>th</sup> July 2020**