



**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/20/2069**

**Re: Property at 100 Parkhead Avenue, Edinburgh, EH11 4RJ (“the Property”)**

**Parties:**

**Mr Niel Friis-Jorgensen, C/o Matriix Property Management Ltd, 132 St Stephen Street, Edinburgh, EH3 5AA (“the Applicant”)**

**Ms Lynne Graham, 100 Parkhead Avenue, Edinburgh, EH11 4RJ (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.**

- Background
  1. An application dated 25 August 2020 was submitted to the Tribunal under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondent upon termination of a short assured tenancy agreement.
- The Case Management Discussion
  2. A Case Management Discussion (“CMD”) took place on 17 December 2020 by tele-conference. The Applicant was represented by Mr Gardiner, solicitor. There was no appearance by or on behalf of the Respondent. The Respondent had emailed the Tribunal administration on the morning of the CMD to advise that she was unable to attend, stating *“my father is very ill with cancer and we*

*have been told we only have days left so I am not home at the moment as I am helping my mother.”*

3. The Tribunal notified the Applicant’s representative of the terms of the Respondent’s email. The Applicant’s representative submitted that this was not the first application raised against the Respondent, and that an earlier case had been heard at the start of the year at which stage the Respondent had advised the Tribunal of her father’s ill health. The application was submitted in terms of section 33 of the Housing (Scotland) Act 1988 and on that basis, the ground for repossession was a mandatory one. It was submitted that the Tribunal should grant the Order regardless.
  4. The Tribunal considered that in the interests of justice and against the background of the email received from the Respondent, that the Respondent should be allowed a further opportunity to appear or be represented. Accordingly, the CMD was adjourned to a further CMD on 4 February 2020 at 10am, at which the Respondent must either appear personally, or be represented.
  5. The Tribunal also issued a Direction under section 16 of the Rules directing that the Respondent must lodge written submissions setting out her position in relation to the Application and the legal basis of any defence being stated, no later than 14 days prior to the next CMD.
  6. A further CMD took place on 4 February 2021. The Applicant was again represented by Mr Gardiner, solicitor. There was no appearance by or on behalf of the Respondent. There had been no communication with the Tribunal by the Respondent. Notification of the date of the continued CMD, the CMD Note of 17 December 2020 and Direction of 17 December 2020 had been intimated on the Respondent by letter and email on 30 December 2020. The Tribunal was accordingly satisfied that the Respondent had been duly notified of the date and time of the CMD and that the CMD could proceed in the Respondent’s absence.
  7. The Applicant’s representative again moved for the order for repossession to be granted as sought. The parties had entered into a Short Assured Tenancy Agreement. The Applicant had served a Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) on the Respondent. The Respondent had failed to remove from the Property and continued to reside therein. The Applicant required repossession of the Property. There had been no communication from the Respondent since the previous CMD.
- Findings in Fact
8. The Tribunal made the following findings in fact:
    - (i) The parties entered into a Short Assured Tenancy Agreement (“the Agreement”) which commenced 8 June 2015. The Agreement stated that the

start date was 8 June 2015 and the end date was 7 June 2016. Thereafter, if the Agreement is not brought to an end by either party it will run on a monthly basis until ended by either party;

(ii) A Notice to Quit and notice under section 33 of the 1988 Act were served on the Respondent on 23 January 2020 by recorded delivery post;

(iii) The Notice to Quit and notice under section 33 of the 1988 Act required the Respondent to remove from the Property by 7 April 2020;

(iv) The Respondent had failed to remove from the Property and continued to reside therein.

- Reasons for Decision

9. The Tribunal was satisfied that the terms of section 33 of the 1988 Act had been met: namely that the tenancy had reached its end; tacit relocation was not operating; a notice had been served in terms of that section giving at least 2 months' notice; and no further contractual tenancy was in existence. Accordingly, the Applicant was entitled to the Order for Repossession as sought.

- Decision

10. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

## **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.**

**Fiona Watson**

**Legal Member/Chair**

**Date: 4 February 2021**