



**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/21/2196

Re: Property at 17/12 Halmyre Street, Edinburgh, EH6 8QA (“the Property”)

Parties:

Mr Ross Fergie, 6 Southhouse Place, Edinburgh, EH17 8FD (“the Applicant”)

**Mr Konrad Belgano, 17/12 Halmyre Street, Edinburgh, EH6 8QA (“the
Respondent”)**

Tribunal Members:

**Petra Hennig-McFatrige (Legal Member) and Melanie Booth (Ordinary
Member)**

Decision

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

A Background:

[1] 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 9 September 2021.

[2] The following documents were lodged by the Applicant prior to the date of the Case Management Discussion (CMD):

1. Copy Tenancy Agreement
2. AT5 document
3. Notice to Quit
4. S 33 Notice
5. Sheriff Officer report confirming service of Notice to Quit and S 33 Notice
6. S 11 Notice to the Local Authority and email confirming sending of same
7. Rent statement

8. Rent increase letter of 13 February 2020
9. Amendment to rent arrears to £4,372.14 on 19. 10.21
10. Rent statement up to 21.10.2021
11. Email from Applicant 26.11.21 with updated rent statement to 9.11.21
12. Email motion dated 20.12.21 to increase arrears figure to £4,858.94
13. Rent statement up to 3.12.21
14. Copy letter intimating same to Respondent dated 20.12.21

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

[3] A Case Management Discussion (CMD) had taken place on 5 November 2021 and the CMD note and directions of said day are referred to for their terms and held to be incorporated herein. Due to the communication problems with the Respondent a further CMD was necessary.

B The Case Management Discussion:

[4] The second CMD took place on 14 January 2022. Ms Morrison attended on behalf of the Applicant. The Respondent attended with his supporter Mr Marjan. Also in attendance was an interpreter for Hungarian, Ms Gynongy. The CMD took place by teleconference.

[5] The Respondent disputes some of the rent arrears and advised that there was a state of disrepair in the property, however, he also clearly stated he wishes to leave the property. He stated he had not appreciated the process and that is why he had not moved out. He had tried to get advice and help but it had been very difficult, and he had contacted the CAB and Shelter but had not received any help. He now will leave shortly. He also added if he was in the position of the landlord, he would ask for the same order and he understands why the landlord has applied for this. He is 54 years old and lives in the property on his own with no dependents. He is in employment, although he got into difficulties with his employment due to Coronavirus and had financial problems. He was not opposing the order being granted.

[6] Ms Morrison referred to the application and moved for the order. She confirmed all legal requirements for the S 33 application had been met and the Respondent had not moved out. There was a high level of rent arrears, although some of these are in dispute. The Respondent was not putting forward any arguments why it would not be reasonable to grant the order. He had not moved out once the notice period had expired. In all the circumstances it would be reasonable to grant the order.

C Findings in Fact:

1. The Applicant and the Respondent entered into a Short Assured Tenancy on 24 December 2013 for an initial period to 29 June 2014 and thereafter month to month.
2. Document AT5 was receipted and signed by the Respondent on 23 December 2013
3. No specific notice period is stated in the tenancy agreement.
4. Notice to Quit dated 23 February 2021 was served on the Respondent by Sheriff Officers on 24 February 2021 advising of the termination of the tenancy on the termination date of 29 August 2021.

5. Tacit relocation is not operating due to the Notice to Quit.
6. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent by Sheriff Officers on 24 February 2021 advising of the intention to repossess the premises on 29 August 2021.
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 14 January 2022.
9. The Respondent lives alone at the property.
10. The Respondent has also accrued rent arrears over a prolonged period of time.
11. The Applicant is reasonably entitled to use the process under S 33 to gain repossession of his property in these circumstances.

D Reasons for the Decision:

[7] 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.

[8] The Tribunal concluded it was not necessary to fix a hearing as the Respondent did not oppose the order being granted and 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. The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the information given at the CMD by Ms Morrison and the Respondent.

[9] The legal test for an eviction order is set out in S 33 of the Housing (Scotland) Act 1988 as amended by the Coronavirus (Scotland) Act 2020. The Coronavirus (Scotland) Act 2020 applies to this case as the Notices were served after 7 April 2020 when the Act came into force.

S 33 states:

33 Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its finish;

(b) that tacit relocation is not operating; and

(c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and.

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and

(e) that it is reasonable to make an order for possession.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;

(ii) in any other case, six months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

In short, 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 end
2. That tacit relocation is not operating
3. That there is no further contractual tenancy in existence
4. That the landlord has given to the tenant notice that he requires possession of the house.
5. That it is reasonable in all the circumstances to grant the order.

[10] The facts of the case are not in dispute. Fair notice of all aspects of the Applicant's case had been provided to the Respondent. The Respondent did not oppose the granting of the order. The dates and documents served as stated above were not in dispute.

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.

[11] The tenancy document and AT5 document show that the tenancy is a Short Assured Tenancy which has reached its end. The landlord had served a notice to quit with the required notice period for the end on 29 August 2021 and thus tacit relocation does not operate. The landlord had served on the Respondents a notice in terms of S 33 (1) of the Housing (Scotland) Act 1988 with the required 6 months notice period. The Notice to Quit ended the contractual tenancy at an end date and thus the tenancy became a statutory assured tenancy in terms of S 16 of the Housing (Scotland) Act 1988.

[12] Even if the formal tests of S 33 (1) of the Housing (Scotland) Act 1988 are met, the Tribunal still has to consider whether it is reasonable in all the circumstances to grant the eviction order. In this case the Tribunal notes that the reason given by the Respondent for not moving out in August 2021 was that he did not understand the notice process. He himself agreed that he would act as the landlord is acting in this case. He was not opposed to the order being granted.

[13] The Tribunal thus considered that on balance and taking into account all the information available it is reasonable to grant the eviction order.

Decision:

The Tribunal grants the order for recovery of possession.

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/Chair

18 January 2021
Date