



**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 for recovery of possession of a Short Assured Tenancy.**

Chamber Ref: FTS/HPC/EV/22/1101

Re: Property at 40 Beech Place, Livingston, EH54 6RB (“the Property”)

Parties:

**Mr Adrian Kay, 54 Chuckethall Road Deans, Livingston, West Lothian, EH54 8FB
 (“the Applicant”)**

Ms Alison Jones, 40 Beech Place, Livingston, EH54 6RB (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Elaine Munroe (Ordinary Member)

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for Recovery of Possession on termination of a Short Assured Tenancy under Section 33 of the Housing (Scotland) Act 1988. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained. It was understood a final decision on the Application could also be made. The hearing took place by teleconference.

Attendance and Representation

The Applicant was present and also represented by Shirley Hepworth. Almond Valley Property Centre 7/8 Inchwood Park, Bathgate, West Lothian, EH48 2FY.

The Respondent did not attend the Tribunal. Sheriff Officer service of the Application and notice of the hearing took place on 27th July 2022. The Respondent has been in ongoing discussion with the Applicant’s representative.

Decision (in absence)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988. The Tribunal further superseded Extract for a period of 8 weeks.

Preliminary Matters

The Tribunal raised with those present the fact that the Respondent was not present. The Applicant’s representative said that there had been ongoing emails and face to face contact with the Respondent. She was aware of the Tribunal but did not disclose if she was intending to appear at the hearing. The Respondent has been in touch with the local authority and the Applicant said she fully understood the position.

Case Management Discussion

The Applicant’s representative said that the Applicant was seeking an order for repossession as he is selling his portfolio and would renovate the property before selling same. Recovery was sought in terms of section 33 of the Housing (Scotland) Act 1988 on the basis the tenancy reached its end. The Applicant’s representative gave evidence that she herself personally delivered the Notice to Quit to the Respondent. The Applicant’s representative said the Respondent had been a tenant with the letting agency since 1989 and in the property since 2012. Relationships between all parties were good.

The Applicant discussed that he has been selling off his portfolio since before covid as his other business interests are taking up resources and he has an exit strategy. The applicant started with 36 properties and now had 12. The funds are required to ensure his business interests are safe and secure going forward. The Applicant said not to sell the property would have a detrimental effect as he runs a bridal and highland wear company with 4 stores and manufacturing location. He has 35 staff and capital is required to secure same. The Applicant said he would work with the Respondent in ensuring she had plenty of time to move forward.

The Tribunal was told the Respondent has part time employment and resides in the property with her 3 children. They are around 12 years and 8 years. There has been attempts to source private alternative accommodation given the good relationship between parties.

Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and that to do so would not be contrary to the interests of the parties having regard to the Overriding objective. The Respondent was not present at the hearing but had received Sheriff Officer service.**

2. The Tribunal was satisfied that the tenancy was in terms of Section 32(1) of the 1988 Act, a Short Assured Tenancy for not less than 6 months and in relation to which a prescribed notice namely a valid AT5 had been served before creation of the short assured tenancy.
3. In terms of Section 33 of the 1988 Act the Tribunal considered that the Short Assured Tenancy had reached its end and the Notice to Quit contained the correct end date.
4. Further the Tribunal was satisfied that no tacit relocation was operating, no further contractual tenancy was in existence and a valid Notice to Quit had been served on the Respondent terminating the tenancy with the necessary notice given to the Respondent. The Applicant's representative confirmed to the Tribunal orally same was hand delivered to the Respondent in terms of Section 54 of the 1988 Act.
5. The necessary Section 11 notice sent to the relevant local authority was lodged.
6. In balancing the circumstances of both parties the Tribunal noted that the Applicant sought to realise capital to fund an ongoing business concern with on or around 34 employees. The Respondent was in part time employment with 3 children. She had not provided written representations. The Tribunal also noted that the Respondent had been in touch with the Local Authority. The relevant notice period and engagement with the letting agent had been clear and ongoing. The Tribunal found that it was reasonable to grant the Order sought in absence of the Respondent and on the information it had. This decision was finely balanced. In its discretion given the age of the children the Tribunal determined that they ought to supersede Extract for 8 weeks to provide further time to the Respondent.
7. Accordingly in terms of Section 33 of the 1988 Act the Tribunal granted an order against the Respondent for possession of the Property.

Reasons for Decision

The Tribunal considered that the Application was full and the necessary statutory requirements met. Given the Applicant had complied with the relevant statutory provisions the question for the Tribunal was whether the Order sought was reasonable. The Tribunal found in particular the evidence of the Applicant to be credible and reliable and relied upon that. It was noted there would be a detrimental effect on an ongoing business concerns without an order. Accordingly in the circumstances the Tribunal considered it was reasonable to grant the Order.

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.

Karen Kirk

10th November 2022

Legal Member/Chair

Date