



**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 (“the Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/20/1139**

**Re: Property at Flat 1, 12 Yeaman Place, Edinburgh, EH11 1BX (“the Property”)**

**Parties:**

**Mrs Sharon Gordon, c/o 13 Jean Armour Drive, Kilmarnock, KA1 2SD (“the Applicant”)**

**Mr Haris Zahir, Mrs Shazia Bibi, Flat 1, 12 Yeaman Place, Edinburgh, EH11 1BX; Flat 1, 12 Yeaman Place, Edinburgh, EH11 1BX (“the Respondents”)**

**Tribunal Members:**

**Nicola Weir (Legal Member)**

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

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

**Background**

1. By application submitted on 1 May 2020, the Applicant sought an order under Section 33 of the Housing (Scotland) Act 1988 (“the Act”) for possession of the Property on termination of a Short Assured Tenancy. The application was made in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). Supporting documentation was lodged in connection with the application, including a copy of the lease, the AT5, the Notice to Quit, the Section 33 Notice and the Section 11 Notice in terms of the homelessness legislation.

2. On 1 September 2020, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance in respect of the application in terms of Rule 9 of the Regulations.
3. A Case Management Discussion (“CMD”) was fixed for 19 October 2020 at 11.30am to take place by telephone conference call and intimation of same given to the parties. Notification of the date and time of the CMD, together with a copy of the application and supporting documentation was served on the Respondents by Sheriff Officer on 21 September 2020. Written representations were to be lodged by 9 October 2020. No written representations were received from or on behalf of the Respondents.

### **Case Management Discussion**

4. The CMD took place on 19 October 2020 at 11.30am before the Legal Member of the Tribunal. The Applicant’s representative, Mrs Lorraine Miller, Letting Agent, was in attendance. The Legal Member delayed the start of the CMD for a few minutes after 11.30am to give the Respondents an opportunity to attend late but they did not.
5. The Legal Member made introductory comments and explained the purpose of the CMD.
6. Mrs Miller then addressed the application and answered questions from the Legal Member. Reference was made to the supporting documentation lodged in connection with the application. Mrs Miller confirmed that the Applicant is seeking possession of the Property as she is returning to live in this country from Australia and requires the Property to live in whilst she undergoes medical treatment. The Applicant previously lived in the Property and rented it to the Respondents on a Short Assured Tenancy before moving to Australia a few years ago. Mrs Miller raised this issue with the Respondents on behalf of the Applicant in January 2020 and explained the position to them before the formal Notices were served. The Respondents were prepared to move and just asked for some flexibility about the timescale which the Applicant was fine with. In terms of the Notices, they required to vacate by 10 March 2020. Mrs Miller said she was approached for a reference for the Respondents for another flat but then Covid struck and they did not vacate. Mrs Miller instructed solicitors at this stage and referred to the email correspondence lodged between the solicitors and the Respondents when, in response to a request that they vacate, the Respondents asked for a rent reduction. Mrs Miller asked about the reason for this request but got no further response. Then, in September 2020, she received an email from the Respondents saying that they were moving out on 9 October 2020 and would leave the keys in the Property. It is her understanding that they have vacated the Property but an eviction order is still sought in order to keep themselves right in taking back the Property. Mrs Miller advised that she has no forwarding address for the Respondents and that communication has been by email. As to the various Notices served, Mrs Miller confirmed that the Notice to Quit and Section 33 Notices were both sent to the Respondents by Guaranteed Next Day delivery on 7 January 2020 and arrived with the Respondents on 8 January 2020, which the Respondents confirmed to

her by email. She made reference to the email correspondence lodged with the Tribunal confirming this. Mrs Miller confirmed that she herself had gone to the Post Office and that she was given the usual receipt but was subsequently unable to find it. She tried unsuccessfully to get a copy from the Post Office. Accordingly, she has not been able to produce this to the Tribunal but lodged instead proof of the amount withdrawn at the post office from her business account that day which she confirmed was the cost of sending the Notices by guaranteed post.

### **Findings in Fact**

7. The Applicant is owner and landlord of the Property.
8. The Respondents are the tenants of the Property by virtue of a Short Assured Tenancy which commenced on 9 July 2016. The initial term of the lease was 6 months, until 10 January 2017, and thereafter continued monthly.
9. The Applicant ended the contractual tenancy by serving on the Respondents a Notice to Quit dated 7 January 2020, specifying an ish date of 10 March 2020, which was an ish date in terms of the lease.
10. A Section 33 Notice, also dated 7 January 2020, was also served on the Respondents, specifying that the Applicant required vacant possession on 10 March 2020.
11. No opposition to the order being granted nor any other representations had been made by the Respondents.

### **Reasons for Decision**

12. Having regard to the overriding objective that proceedings must be dealt with justly, the Legal Member determined that, in the circumstances of this case and having regard to Rules 17 and 18 of the Regulations, this case could be determined at the CMD and did not require to be continued to a Hearing.
13. Section 33 of the Act states that an order for possession shall be granted by the Tribunal if satisfied that (a) the short assured tenancy has reached its ish; (b) that tacit relocation is not operating; (c) that no further contractual tenancy is in existence and (d) that the landlord has given to the tenant notice stating that he requires possession of the house.
14. The Legal Member was satisfied that the Notice to Quit and Section 33 Notice were in correct form and had been properly and timeously served on the Respondents, that the requirements of Section 33 of the Act had been met and that the application for possession should accordingly be granted.

## **Decision**

15. The order for possession was granted.

## **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.**

# **N Weir**

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**Legal Member/Chair**

**19 October 2020**

**Date**