



**Notes on a Case Management Discussion of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Private Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/22/2223**

**Re: Property at 3/12 Hermitage Park, Edinburgh, EH6 8HD (“the Property”)**

**Parties:**

**Ms Linda Dorward, Greystone, 53 Moffat Road, Dumfries, DG1 1NN (“the Applicant”)**

**Ms Lungowe Kashina, 3/12 Hermitage Park, Edinburgh, EH6 8HD (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be determined without a Hearing and made an Order for Possession of the Property.**

**Background**

By application, received by the Tribunal on 5 July 2022, the Applicant sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”), namely recovery of possession on termination of a Short Assured Tenancy.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Applicant as landlord and the Respondent and Ms Katie Green as tenants, commencing on 23 September 2014 and, if not terminated on 23 September 2015, continuing on a monthly basis until ended by either Party. The Applicant also provided a copy of a Form AT5 Notice, a Notice given under Section 33 of the 1988 Act and a Notice to Quit. The Section 33 Notice and Notice to Quit, both served on the Respondent only, were both dated 5 April 2022, with proof of delivery of both Notices by sheriff officer on 8 April 2022. The Notice to Quit required the Respondent to vacate the Property by 23 June 2022 and the Section 33 Notice also required her to remove

by that date. The copies of the Short Assured Tenancy Agreement and Form AT5 Notice were unsigned versions.

On 14 September 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 5 October 2022. The Respondent did not make any written representations to the Tribunal.

### **Case Management Discussion**

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 30 November 2022. The Applicant was represented by Mr Calvin Gordon of Thorntons Law LLP, Edinburgh. The Respondent was not present or represented.

Immediately prior to the Case Management Discussion beginning, the Tribunal Members were made aware of two emails sent to the Tribunal by the Applicant's solicitors. In the first email, dated 22 November 2022, they sought leave to amend the application. The amended application stated that the Respondent was now the sole tenant of the Property. There had previously been joint tenants, the first of these being Ms Katie Green. Her interest ended on or around March 2019. On 3 May 2019, Ms Laura Tully became the second joint tenant. Her interest ended on 20 June 2021, since when the Respondent had been the sole tenant. The initial period of the Short Assured Tenancy was until 23 September 2015 and it had continued on a month-to-month basis since then. A Form AT5 Notice was served on the Respondent and Ms Green prior to the tenancy being created. The Applicant also argued that, although only unsigned copies of the Short Assured Tenancy Agreement and Form AT5 had been provided, the Parties had acted on the faith of the tenancy agreement, so would be personally barred from denying its existence.

A Form AT6 Notice (a Section 33 Notice) and a Notice to Quit were served on the Respondent on 8 April 2022. As at 22 November 2022, the Respondent remained in the Property. *Esto* Ms Green or Ms Tully terminated the contractual tenancy by serving a Notice to Quit, which was not known to the Applicant and her solicitors, the tenancy would be operating as a statutory tenancy in any event. In such circumstances, the Notice to Quit served on the Respondent would be invalid, but the Section 33 Notice would be valid.

The email of 22 November 2022 was accompanied by an Affidavit by the Applicant setting out the timeline in relation to the tenancy and stating that she believed she had lost the signed copies of the Short Assured Tenancy Agreement and Form AT5 Notice when she moved house and that the copies she had obtained from the letting agents who had prepared them were unsigned. She also stated that she no longer wished to be a landlord and wished to sell the Property with vacant possession. She did not intend moving back into it. She added that there had been difficulties in obtaining access for a gas engineer to inspect the gas appliances and renew the Gas Safety Certificate and that attempts to communicate with the Respondent by telephone and text had been unsuccessful.

The email of 22 November 2022 also enclosed a copy of an email from the Applicant's former letting agents, A Flat in Town Limited, in which the agents stated that in cases such as this, where they provided only a Set-up Service rather than full management, they would send the Form AT5 and Tenancy Agreement to the landlord to arrange signing. As a result, they would not hold signed copies of those documents.

The email of 30 November 2022 forwarded an email of 23 November 2022 from the Respondent to the Applicant's solicitors, detailing her medical history and personal circumstances, attaching a copy of a letter from her medical practice and stating her intention to vacate the Property by the end of November 2022. She provided documentary evidence that she had hired storage space in October 2022, but stated that she had been too unwell to move out at that time.

The Tribunal held a short adjournment, after which it intimated to Mr Gordon that it intended to continue the Case Management Discussion to a later date, to give the Tribunal time to consider the emails that it had, through no fault of the Applicant or her solicitors, just received.

The continued Case Management Discussion was held by means of a telephone conference call on the morning of 7 March 2023. The Applicant was again represented by Mr Gordon. The Respondent was not present or represented.

The Tribunal Chair told the Applicant's representative that the Tribunal Members had now had an opportunity to consider the emails of 22 and 30 November 2022 and were satisfied that the status of the Respondent was unaffected by the departure of the first co-tenant and the arrival and departure of a second co-tenant. The Respondent had received a Notice to Quit and her status was that of a statutory tenant under a Short Assured Tenancy. Accordingly, it was competent to proceed under Section 33 of the 1988 Act and the remaining matter for decision was whether it would be reasonable to make an Order for Possession.

Mr Gordon confirmed that the Respondent is still resident in the Property, but there had been a complete lack of communication or response from her. As a result, the Applicant had still been unable to arrange access for a gas engineer or for the annual electrical safety checks and this was a matter of great concern to her. If an Order were made, the local authority would have a duty to provide accommodation for her on a temporary and then permanent basis. The principal reason for seeking an Order was a change of circumstances of the Applicant. The Respondent had, however, known from the outset that this was a Short Assured Tenancy and that the Applicant could apply for an Order for Possession at any time.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 33 of the 1988 Act states that the Tribunal may make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence, that the landlord has given to the tenant notice stating that he requires possession of the house, and that it is reasonable to make the Order for Possession.

The Tribunal was satisfied that the tenancy had reached its end, that, by service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence between the Parties and that the Notice required under Section 33 of the 1988 Act had been properly given. The remaining matter for the Tribunal to consider was, therefore, whether it would be reasonable to issue an Order for Possession.

The Tribunal accepted as reasonable the Applicant's explanation for being unable to provide copies of the signed versions of the Form AT5 and the Short Assured Tenancy Agreement.

The Tribunal considered carefully the arguments put forward by and on behalf of the Applicant as to why it would be reasonable to make an Order for Possession, namely her decision that she no longer wished to be a landlord and wished to sell the Property with vacant possession and the fact that, due to a failure by the Respondent to communicate or to reply to attempts by the Applicant to contact her, she had been unable to arrange access for a gas engineer and electrical contractor to carry out inspections that were required to ensure tenant safety. The Tribunal noted that the Respondent had indicated that she wished to vacate the Property and had not provided any information to indicate that it would not be unreasonable to make an Order for Possession. Taking into account all the facts and circumstances, the Tribunal decided that it would be reasonable to make an Order for 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.**

George Clark

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Legal Member/Chair

7 March 2023  
Date