



**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/18/2868**

**Re: Property at 41 Cranston Street, Penicuik, EH26 9BP (“the Property”)**

**Parties:**

**Mr David Jarvis, c/o The Key Place, 6 Bank Street, Penicuik, EH26 9BG (“the Applicant”)**

**The Key Place, 6 Bank Street, Penicuik, EH26 9BG (“the Applicant’s Representative”)**

**Miss Sarah Lumsden and Mr Matthew Henderson, both residing at 41 Cranston Street, Penicuik, EH26 9BP (“the Respondents”)**

**Tribunal Members:**

**Ruth O’Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession of the property against the Respondents.**

**Background**

- 1 By application dated 24 October 2018 the Applicant, with consent of the joint owner Mrs Rose Ann Jarvis, sought an order for recovery of possession of the property under section 33 of the Housing (Scotland) Act 1988.
- 2 By Notice of Acceptance of Application dated 7 December 2018 the Legal Member of the First-tier Tribunal with delegated powers of the Chamber President confirmed that there were no grounds for rejection of the application and a Case Management Discussion was assigned for 25<sup>th</sup> January 2019.

- 3 Copies of the application together with notification of the Case Management discussion were served upon the Respondents by Sheriff Officers on 9 January 2019.

### **The Case Management Discussion**

- 4 The Case Management Discussion took place on 25<sup>th</sup> January 2019 at George House, 126 George Street, Edinburgh. Mr Robert Young and Ms Fiona Macbeth appeared on behalf of the Applicant's Representative. Miss Lumsden appeared. As a preliminary matter Miss Lumsden advised that Mr Henderson had moved out of the property on or around May 2018. Mr Young confirmed that he was aware of this and that formal notice to terminate Mr Henderson's share of the tenancy had been received on 9<sup>th</sup> August 2018. Mr Young therefore accepted that Mr Henderson no longer required to be a party to the proceedings. The Tribunal therefore agreed to remove Mr Henderson from the application.
- 5 Mr Young advised that his client sought recovery of possession under section 33 of the Housing (Scotland) Act 1988. Notice to Quit and a notice under section 33(1)(d) of the Act had been served on the Respondents by Sheriff Officers. The Tribunal was therefore obliged to grant repossession.
- 6 Ms Lumsden advised that she had been trying to find alternative accommodation through friends and had now sought assistance from the Council. However they were finding it difficult to find her a suitable property due to her mental and physical health issues. She advised that she had been through a difficult time over the past year and did not want to be in this position. She was not disputing the terms of the application.

### **Findings in Fact**

- 7 The Applicant and the Respondent entered into a Tenancy Agreement dated 9 December 2016 in respect of the Property, the term of which was 9 December 2016 to 9<sup>th</sup> June 2017 and monthly thereafter.
- 8 The tenancy was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 9 On 3<sup>rd</sup> August 2018 the Respondents were served with a Notice to Quit terminating the tenancy as at 9 October 2018 and Notice intimating that the Landlord required possession of the house. Both Notices were served by Sheriff Officers.
- 10 Mr Henderson terminated his share of the tenancy on 9<sup>th</sup> August 2018.
- 11 The tenancy has reached its end as at 9<sup>th</sup> October 2018. Tacit relocation is not operating.

**Reasons for Decision**

12 In this case the Applicant seeks an order for repossession of a short assured tenancy under section 33 of the Housing (Scotland) Act 1988

13 Section 33(1) of the Housing (Scotland) Act 1988 provides as follows:-

“(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 shall 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;*
- (c) *.....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.”*

14 The Tribunal was satisfied that a valid Notice to Quit had been properly served on the Respondents which terminated the contractual tenancy between the parties as at 9 October 2018. Accordingly tacit relocation was not operating and the Respondents had been given notice that the Applicant required possession of the Property. Ms Lumsden did not dispute this and Mr Henderson had vacated the property. Whilst the Tribunal had sympathy with Ms Lumsden’s position it was conscious that the provisions of section 33 offered no discretion in its determination of the application. There being no dispute regarding the relevant facts of the case, the Tribunal considered that it was able to make sufficient findings to determine the case without a hearing and that to do so would not be prejudicial to the interests of the parties.

15 The Tribunal therefore concluded that the provisions of section 33 had been met and determined to make an order for repossession.

**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**

Ms Ruth O'Hare

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Legal Member/Chair

25/1/19  
\_\_\_\_\_  
Date