



**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/19/3015

**Re: Property at 133 Spottiswoode Gardens, Mid Calder, Livingston, EH53 0JY
("the Property")**

Parties:

Mr George Gardiner, 13 Curlew Brae, Livingston, EH54 6UG ("the Applicant")

**Harper MacLeod, The Ca'd'oro, 45 Gordon Street, Glasgow, G1 3PE ("the
Applicant's Agent")**

**Mr Stuart Marshall, 133 Spottiswoode Gardens, Mid Calder, Livingston, EH53
0JY ("the Respondent")**

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 Respondent**

- 1 By application dated 25th September 2019 the Applicant sought an order for repossession of the property against the Respondent. In support of the application the Applicant submitted the following documentation:-
 - (a) Short Assured Tenancy Agreement between the parties dated 19th June 2012;
 - (b) Form AT5 dated 19th June 2012 together with proof of receipt by Respondent;
 - (c) Copy Notice to Quit dated 30th May 2019 terminating the tenancy as at 30th August 2019;

- (d) Copy Notice under Section 33(1)(d) of the Housing (Scotland) Act 1988 dated 30th May 2019;
 - (e) Recorded Delivery receipt dated 31st May 2019; and
 - (f) Notice to West Lothian Council under section 11 of the Homelessness etc (Scotland) Act 2003 dated 25th September 2019.
- 2 By Notice of Acceptance of Application dated 1st November 2019 the Legal Member of the First-tier Tribunal with delegated powers of the Chamber President agreed that there were no grounds on which to reject the application. A Case Management Discussion was therefore scheduled for 23rd December 2019.
- 3 A copy of the application together with notification of the Case Management Discussion was served upon the Respondent by Sheriff Officers on 25th November 2019.

Case Management Discussion

- 4 The Case Management Discussion took place at Riverside House, Edinburgh on 23rd December 2019. Alastair Johnston appeared on behalf of the Applicant's Agent. The Applicant's wife Kirsten Gardiner was also present. The Respondent did not attend. The Legal Member was satisfied that he had received proper notification of the date, time and location of the Case Management Discussion and therefore determined to proceed in his absence.
- 5 Mr Johnston advised that the Applicant sought an eviction order under section 33 of the Housing (Scotland) Act 1988. There had been no recent contact from the Respondent. Neighbours had advised that he had moved out of the property but he had not been in touch to advise the Applicant of this. Accordingly the order was necessary.

Findings in Fact and Law

- 6 The parties entered into a Tenancy Agreement in respect of the property which commenced on 30 June 2012. The term of the tenancy was 30 June 2012 to 30th December 2012 and two monthly thereafter.
- 7 The tenancy was a Short Assured Tenancy as defined by section 32 of the Housing (Scotland) Act 1988.

- 8 A Notice to Quit was served upon the Respondent on 30th May 2019 by recorded delivery mail. The said Notice terminated the tenancy as at 30th August 2019.
- 9 The tenancy has reached its end as at 30th August 2019. Tacit relocation is not operating.
- 10 The Respondent has been served with notice intimating that the Applicant requires possession of the property as at 30th August 2019.

Reasons for Decision

- 11 The Tribunal was satisfied that it was able to make a decision at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Respondent had received service of the application by Sheriff Officers. The Tribunal therefore considered it could reasonably assume that he was aware of the Case Management Discussion and had been given the opportunity to attend or make written representations in response to the application.
- 12 The Applicant sought an order under section 33 of the Housing (Scotland) Act 1988 which permits a landlord to seek an order for possession of a Short Assured Tenancy where the tenancy has reached its end, tacit relocation is not operating and the landlord has given at least two months notice that he requires possession of the house.
- 13 The Tribunal accepted based on its findings in fact that the tenancy between the parties was a Short Assured Tenancy and the Applicant could therefore rely on the provisions of section 33 to recover possession of the property. The Tribunal was further satisfied that a valid Notice to Quit had been served upon the Respondent which had terminated the tenancy at an end date, namely 30th August 2019. Accordingly tacit relocation was no longer operating. The Applicant had also served the Respondent with notice under section 33(1)(d) of the Act on 30th May 2019 advising that he required possession of the house as at 30th August 2019.
- 14 Accordingly the Tribunal accepted that the provisions of section 33 had been met. It was therefore obliged 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.

Ruth O'Hare

Legal Member/Chair

23/12/19

Date