



**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 1988 Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/EV/19/3441**

**Re: Property at 17/16 Northfield Grove, Edinburgh, Midlothian, EH8 7RN (“the Property”)**

**Parties:**

**Mr John Bell, 47 Cleekim Drive, Edinburgh, EH15 3QP and Mrs Evelyn Bell, 22 Peacocktail Close, Edinburgh, EH15 3QS (“the Applicants”)**

**TC Young, Solicitors, 7 West George Street, Glasgow, G2 1BA (“the Applicants’ Representative”)**

**Mr Sarka Svatosova and Mrs Jiri Svataos, 17/16 Northfield Grove, Edinburgh, Midlothian, EH8 7RN (“the Respondents”)**

**Tribunal Members:**

**Susanne L M Tanner Q.C. (Legal Member)**

**Decision (in absence of Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) (i) was satisfied in terms of Section 33 of the 1988 Act that the short assured tenancy for the Property has reached its end; tacit relocation is not operating; no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and the Applicants have given to the Respondents two months’ notice stating that they require possession of the house; and (ii) made an order for possession in terms of Section 33 of the 1988 Act**

## Statement of Reasons

1. The Applicants' Representative made an application to the tribunal on 25 October 2019 in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicants seek the Respondents' eviction from the Property under Section 33 of the 1988 Act (possession on termination of a short assured tenancy).
3. The Applicant lodged:
  - 3.1. a copy of the short assured tenancy agreement between the Applicants and the Respondents dated 12 February 2014;
  - 3.2. Copies of two AT5 notices to the Respondents dated 12 February 2014;
  - 3.3. Copy of a notice to the Respondents under Section 33(1)(d) of the 1988 Act, dated 14 August 2019, notifying the Respondents that the Applicant required possession of the Property as at 17 October 2019;
  - 3.4. Copy of a Notice to Quit dated 14 August 2019, notifying the Respondents that they were required to remove from the Property with effect from 17 October 2019;
  - 3.5. Sheriff Officer's Certificates of service of the Notice to Quit and Section 33 Notice dated 16 August 2019;
  - 3.6. a copy of the Section 11 Notice which was sent to the local authority.
4. On 8 November 2019, the Application was accepted for determination and a Case Management Discussion ("CMD") was thereafter fixed for 7 January 2020 at 1000 in George House, 126 George Street, Edinburgh.
5. On 25 November 2019 parties were notified by letter of the date, time and place of the CMD and told that they were required to attend. Parties were also advised in the same letter that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the Application, which may involve making or refusing an eviction order. If parties do not attend the CMD this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Respondent was afforded the opportunity to return written representations to the tribunal's offices by 16 December 2019.

6. The Application paperwork and notification of the date, time and place of the CMD was personally served on the Respondents on **27 November 2019**.
7. The Respondents did not submit any written representations in response to the eviction case. (On 13 December 2019, the tribunal received an application for a Time to Pay Direction in the related case reference CV/19/3443, although only one Application dated 9 December 2019 was made in the name of the First Respondent only and it was signed in the Declaration section 9 by the Second Respondent only.)

#### **8. Case Management Discussion (“CMD”): 7 January 2020 at 1000 at George House, 126 George Street, Edinburgh**

8.1. Ms Caldwell, Solicitor from the Applicant’s Representative attended on behalf of both Applicants.

8.2. The Respondents did not appear or make any contact with the tribunal’s administration. The tribunal has a certificate of service on the Respondents of notification of the date, time and place of the CMD and the Application paperwork on 27 November 2019. The tribunal was satisfied that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the parties present and all the material before it, in terms of Rule 29 of the 2017 Rules.

8.3. The tribunal chair indicated to parties that there was the possibility of the Respondents applying for recall of any decision of the tribunal because the tribunal made the decision in absence because that party did not take part in proceedings, failed to appear or be represented at a hearing, in terms of Rule 30 of the 2017 Rules; and that any such Application would have to be in writing, in time and state why it was in the interests of justice for the decision to be recalled.

#### **8.4. Oral Submissions on behalf of the Applicants**

8.4.1. Ms Caldwell stated that she has been instructed to seek an order for possession in terms of section 33 of the 1988 Act. The Respondents served AT5 Notices on each tenant on 12 February 2014. The Short Assured tenancy agreement was signed by all parties on 12 February 2014.

8.4.2. The tenancy agreement provides that the date of entry to the Property was 12 February 2014 and the original date of termination was specified as 17 August 2014. It provides that “if the agreement is not brought to an end by either party on the end date it will continue thereafter on a monthly basis until ended by either party.”

8.4.3. Paragraph 30 provides that the ways in which the short assured tenancy can be ended, include: “30.1 The tenancy reaching its end date and the landlord giving two months’ prior written notice that possession of the house is required in terms of section 33 of the Housing (Scotland) Act 1988 at that end date”; and “30.2 By the landlord serving on the tenant a Notice to Quit, ... to terminate the tenancy at its end date... .”

8.4.4. It was submitted on behalf of the Applicants that the tenancy had reached its end on 17 October 2019 as it had continued by tacit relocation on a month to month basis from 17 August 2014, until terminated with the service of a valid notice to quit and Section 33 notice dated 14 August 2019 (and served by Sheriff Officers on 16 August 2019, notifying the Respondents that the Applicant required vacant possession of the Property as at 17 October 2019 and that the Respondents were required to remove from the property on or before 17 October 2019. Said notices were served at least two months before possession of the house was required. The Application to the tribunal was made within the period of six months from the date of service of the notices.

8.4.5. The section 11 Notice was emailed to the Council on 23 October 2019.

9. The tribunal makes the following findings-in-fact:

9.1. There was a short assured tenancy between the parties for the initial period 12 February 2014 to 17 August 2014;

9.2. Thereafter the tenancy continued by tacit relocation on a monthly basis;

9.3. The short assured tenancy reached its end on 17 October 2019 by service on behalf of the Applicants on the Respondents, on 16 August 2019, of a Notice to Quit dated 14 August 2019, notifying the Respondents that the tenancy would reach its termination date as at 17 October 2019.

9.4. Tacit relocation is no longer operating;

9.5. No further contractual tenancy is for the time being in existence.

9.6. A Section 33 notice was served on behalf of the Applicants on the Respondents on 16 August 2019, notifying the Respondents that the Applicants required vacant possession as at 17 October 2019.

9.7. The Applicants have given to the Respondents at least two months' notice stating that they require possession of the Property.

9.8. The Application to the tribunal was made on 25 October 2019, which is within the period of 6 months from the date of service of the notices.

## **10. Findings in Fact and Law**

10.1. The tribunal is satisfied that the requirements of Section 33 of the 1988 Act are met and therefore must make an order for possession of the Property.

### **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.**

**7 January 2020**

  
**Susanne L M Tanner Q.C.**  
**Legal Member/Chair**