



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 33(1) of the Housing
(Scotland) Act 1988**

Chamber Ref: FTS/HPC/EV/18/0820

Re: Property at 35 Preston Road, Prestonpans, EH32 8HZ (“the Property”)

Parties:

Mr Thomas Irving, 48 Peacock Tail Close, Edinburgh, EH15 3QS (“the Applicant”)

Miss Tracey Ryan, 35 Preston Road, Prestonpans, EH32 8HZ; Jason Kirkby, HMP Kilmarnock, Mauchline Road, Kilmarnock, KA1 5AA (“the Respondent”)

Tribunal Member:

George Clark (Legal Member)

Decision

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

Background and Case Management Discussion

At a Case Management Discussion held on 27 July 2018, permission had been granted to the Applicant to amend the application, which had been received by the Tribunal on 6 April 2018, so that the application proceeded under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”) and the remedy sought was an order for possession of the Property in terms of Section 33(1) of the Housing (Scotland) Act 1988. A copy of the amended application was given to the First Respondent at the Case Management Discussion and was served on the Second Respondent on 1 August 2018.

A Case Management Discussion was held at Riverside House, 502 Gorgie Road, Edinburgh EH11 3AF on the morning of 18 September 2018. The Applicant was

present at the Case Management Discussion and was represented by Ms Nicola Lyall. The First Respondent was present and was represented by Mr Ian Girot of Citizens Advice, Haddington and was accompanied by Karen Devlin, a support worker. The Second Respondent was not present or represented.

The Legal Chair reminded the Parties that, in terms of Rule 17 of the 2017 Regulations, the Tribunal can, at a Case Management Discussion, do anything it may do at a hearing, including making a decision on the application.

The representative of the First Respondent told the Tribunal that Miss Ryan was not disputing the validity of the Section 33 Notice that had been issued by the Applicant on 1 September 2017, advising the Respondent that the Applicant required possession of the Property by 12 December 2017.

The Applicant sought the order requested in the amended Application, namely an Order for Possession, under Section 33(1) of the 1988 Act.

Findings in Fact

The Tribunal finds that the tenancy is a Short Assured Tenancy, which commenced on 12 June 2015 and continued until 12 December 2015 and thereafter by tacit relocation until the date of service of the Section 33 Notice, advising the Respondent that the Applicant required possession of the Property by 12 December 2017. One effect of the Section 33 Notice was to prevent tacit relocation operating after that date.

The Tribunal is satisfied that a Notice under Section 33(1)(d) of the 1988 Act, dated 1 September 2017, was validly given to the Respondent and that notification of the amended application was given to the First Respondent on 27 July 2018 and to the Second Respondent on 1 August 2018

Reasons for Decision

The Tribunal was satisfied that it had before it all the information it required in order to make a decision on the application and that, as the First Respondent was not contesting the validity of the Section 33 Notice and the Second Respondent had made no written representations and was not present or represented, it was able to decide the application without a hearing, all in terms of Rule 17 of the 2017 Regulations

The Tribunal 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 and that the Applicant has given to the Respondent notice that he requires possession of the Property. Accordingly, all the requirements of Section 33(1) of the 1988 Act have been met and the Tribunal must make an order for possession of the property.

Decision

The Tribunal grants the application and makes an Order for Possession of the Property in terms of Section 33(1) of the Housing (Scotland) Act 1988.

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

Legal Member/Chair

18 September 2018

Date