



**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/19/1567

Re: Property at 12/4 Loganlea Terrace, Edinburgh, EH7 6NT (“the Property”)

Parties

**Mr Edward Lamb, c/o Beveridge and Kellas Solicitors, 52 Leithe Walk ,
Edinburgh, EH7 6NT (“the Applicant”)**

**Miss Kerry Anne Glasgow, 12/4 Loganlea Terrace, Edinburgh, EH7 6NT (“the
Respondent”)**

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland has decided to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988. **The order will be issued to the Applicant after expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.**

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 22 May 2019, the Applicant's solicitor applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") for an order for recovery of possession of the Property in terms of Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
2. On 24 May 2019, the Tribunal requested sight of the AT6 Notice in terms of Section 18 of the Housing (Scotland) Act 1988. The Applicant's solicitors replied on 28 May 2019 to advise that no AT6 had been served, was not required, as they had served a Notice to Quit and a Notice in terms of Section 33 of the Housing (Scotland) Act 1988.
3. On 11 June 2019, the Tribunal wrote to the Applicant's solicitor requesting whether they wished to proceed with the Application under Rule 65 or Rule 66 of the Regulations. On 14 June 2019, the Applicant's solicitor confirmed they wished to amend the application to proceed under Rule 66 of the Regulations, being an application for recovery of possession under Section 33 of the Housing (Scotland) Act 1988.
4. On 28 June 2019, the Tribunal wrote to the Applicant's solicitor requesting a copy of the AT5. They sent a copy of the AT5 to the Tribunal on 1 July 2019.
5. On 12 July 2019, the Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
6. On 22 July 2019, the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 11 August 2019. The Tribunal advised parties on 22 July 2019 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 2 September 2019. This paperwork was served on the Respondent by Keith Morrison, Sheriff Officer, Dunbar on 23 July 2019 and the certificate of execution of service was received by the Tribunal administration.
7. The Respondent did not make any written representations by 11 August 2019.

Case Management Discussion

8. The Tribunal proceeded with the Case Management Discussion on 2 September 2019. The Applicant was represented by Miss Harrison from Beveridge and Kellas, solicitors. The Applicant appeared personally. The Respondent did not appear and was not represented.
9. The Tribunal had before it a Short Assured Tenancy Agreement between the Applicant and the Respondent signed and dated 22 January 2007, an AT5 signed and dated 22 January 2007, a Notice to Quit dated 3 November 2018 and a Notice under Section 33 of the Housing (Scotland) Act 1988 also dated 3 November 2018 with a proof of postage dated 3 November 2018, and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Edinburgh City Council dated 22 May 2019.
10. The Tribunal noted the Short Assured Tenancy (“the tenancy”) commenced on 22 January 2007 and continued until 22 July 2007 and then on a monthly basis. The Tribunal also noted the Notice to Quit and Notice under Section 33 of the Housing (Scotland) 1988 dated 3 November 2018 addressed to the Respondent. Both notices were served on the Respondent by way of Recorded Delivery post 3 November 2018 and requested the Respondent to vacate the Property by 22 March 2019. The Respondent had not vacated the Property on 22 March 2019 and was still living in the Property.
11. Miss Harrison moved the Tribunal to grant an order for eviction under Section 33 of the Housing (Scotland) Act 1988.

Findings In Fact

12. The Applicant let the Property to the Respondent under a Short Assured Tenancy dated 22 January 2007 with a start date of 22 January 2007 until 22 July 2007. The tenancy continued on a monthly basis thereafter.
13. On 3 November 2018 by way of Recorded Delivery post the Applicant served on the Respondent a Notice to Quit terminating the tenancy on 22 March 2019.
14. On 3 November 2018 by way of Recorded Delivery post the Applicant served on the Respondent a Notice in terms of Section 33 of the Housing (Scotland)

Act 1988 indicating the Applicant intended to take possession of the Property on 22 March 2019.

15. There is no other contractual tenancy in existence between the parties.
16. The Tribunal considered the issues set out in the application and noted that despite the Respondent being given notice of the Case Management Discussion, the Respondent had not lodged any written representations to dispute the application and was not present or represented at the Case Management Discussion. The Tribunal proceeded to hear and determine the application in the absence of the Respondent on being satisfied that the requirements of Rule 24(1) of the Regulations regarding the giving of notice of a hearing to the Respondent had been complied with.
17. The Tribunal concluded that the Applicant was entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met which would entitle the Applicant to repossess the Property namely that-
 - i. the Short Assured Tenancy had reached its term (termination date) on 22 March 2019;
 - ii. the Notice to Quit brought the contractual Short Assured Tenancy to an end on 22 March 2019;
 - iii. no further contractual tenancy was in existence; and
 - iv. that the Applicant had given the Respondent at least 2 months' notice in terms of Section 33(1) (d) of the Housing (Scotland) Act 1988 stating that possession of the property was required on 22 March 2019.
18. In terms of Section 33(1) of the Housing (Scotland) Act 1988, the Tribunal shall make an order for possession where it is satisfied that the statutory terms of Section 33 of the Housing (Scotland) Act 1988 have been met. Accordingly, the Tribunal found that the Applicant was entitled to an order for possession of the Property.

Decision

19. The Tribunal granted 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.

Shirley Evans

Shirley Evans
Legal Member

2 September 2019