



**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/18/3473

**Re: Property at 4 Fionn Lann, Edinburgh Road, Dumfries, DG1 1UA (“the
Property”)**

Parties:

**Dumfries and Galloway Homes, Huntingdon, 27 Moffat Road, Dumfries, DG1
1NN (“the Applicant”)**

**Miss Tracy Scott, 4 Fionn Lann, Edinburgh Road, Dumfries, DG1 1UA (“the
Respondent”)**

Tribunal Members:

Jan Todd (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for possession/eviction should be granted.**

1. Background

This was a case management discussion (CMD) to consider an application by the Applicant dated 17th December 2018 for an order for possession of the Property and eviction of the Respondent from the Property on the termination of a short assured tenancy in terms of Rule 66 of the First Tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017. A copy of the application and accompanying documents including were served on the Respondent by Sheriff Officers by letterbox service on 28th January 2019.

The Following documents were submitted and considered by the Tribunal at the CMD:-

1. Lease between the landlord and tenant dated 19th August 2016

2. Notice to Quit dated 7th August 2018
3. S33 notice dated 7th August 2018
4. S11 Notice to Dumfries and Galloway Council advising proceedings were raised on 17th December 2018
5. Execution of service by sheriff officers dated 7th August 2018 confirming service of Notice to Quit and S33 Notice served on the Respondent by leaving papers in her premises after verifying she still lives there.
6. Certificate of Incorporation on Change of Name from Loreburn Development Agency Limited to Dumfries and Galloway Homes Limited.
7. At the CMD a copy of the Register of Sasine search sheet was produced showing the Property was registered on 1s March 1996 in name of Loreburn Development Agency Limited

2. The Case Management Discussion

The applicant was represented by their solicitor Ms Kirsty Morrison of T C Young solicitors at the CMD. At 10am the Respondent had not appeared nor was represented. The Convenor delayed the commencement of the CMD by 10 minutes to allow time for the Respondent to appear but the Respondent did not appear in person nor was she represented by anyone. The Respondent had not lodged any written representations for the Tribunal to take account of.

Ms Morrison confirmed that she was seeking an order for possession today on the basis that the tenancy had reached its end, and that by virtue of the Notice to Quit which had been served on 7th August ending the tenancy on its end date of 28th September, tacit relocation was not operating and no further contractual tenancy exists. She further advised that as a S33 notice had been served also on 7th August, but giving 2 months notice, and advising the Respondent that she required to leave by 28th October 2018 the terms of s33(1) and (2) of the Housing (Scotland) Act had been met and therefore she was asking for the Tribunal to grant an order for possession in terms of S33 (1) which is a mandatory right of possession if the tenancy has ended, no further contractual tenancy is in existence and the landlord has given the tenant notice he requires to leave.

The convenor queried the ownership of the Property and was advised by Ms Morrison that the property was originally in the name of Loreburn Development Agency Limited but that they had changed their name to Dumfries and Galloway Homes Limited by a Certificate of Incorporation of change of Name in 1996, therefore the lease which was entered into in 2016 was appropriately entered into by Dumfries and Galloway Homes Limited who are the owners of the Property and therefore have a right title and interest to bring this application.

3. Findings in Fact

- The Applicant and the Respondent entered into a lease of the Property on 19th August 2016 for an initial period of 6 months until 19th February 2017 and thereafter on a rolling basis ending on 28th of each month.
- An AT5 form advising the tenant that this was a short assured tenancy was served on the Respondent on 19th August 2016 and

acknowledged in the Lease that this was received prior to the lease being signed.

- A notice to quit dated 7th August 2018 was served on the respondent requiring her to leave by 28th September 2018
- A s33 notice was served on the Respondent advising that the landlord requires possession of the Property by 28th October 2018.
- Both notices were served by Sheriff Officers on 7th August 2018.
- S11 notice was served on Dumfries and Galloway Council advising of the raising of proceedings for possession.
- The Applicants are the owners of the property.
- The Applicants believe the Respondent is still living in the Property.

4 Reasons for the Decision

The tenancy has come to an end and tacit relocation is not operating, as a valid Notice to Quit was served giving at least 40 days' notice. No further contractual tenancy exists and the S33 notice has been served giving 2 months' notice as required in terms of S33(2) of the Act. In terms of S33 (1) of the Act the Tribunal shall make and order for possession of the house if it is satisfied

- a) That the short assured tenancy has reached its end
- b) That tacit relocation is not operating
- c) That no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence and
- d) That the landlord has given to the tenant notice stating that he requires possession of the house.

All of the above requirements having been met the Tribunal has no alternative but to grant the order for possession.

Decision

The Tribunal grants an order for possession of the Property to the Applicant.

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.

J.Todd

Legal Member/Chair

18/2/19

Date