

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**Statement of Decision 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/17/0470**

**Re: Property at 29 Regent Terrace Flat 3, Edinburgh, EH7 5BS (“the Property”)**

**Parties:**

**Mr Jan Ordoqui, Mrs Hilary Ordoqui, 13 Rue De Grassi, Bordeaux 33000, France (“the Applicant”)**

**Mr Adil Mahmood, 29 Regent Terrace, Edinburgh, EH7 5BS (“the Respondent”)**

**Tribunal Members:**

**Anne Mathie (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for repossession be granted.**

- This is a Rule 66 case regarding a property known as and forming Flat 3, 29 Regent Terrace, Edinburgh. EH7 5BS. An application was submitted to the Tribunal by the Applicants dated 7 December 2017 setting out that the Applicants seek possession of the tenancy under section 33 of the Housing (Scotland) Act 1988 (Rule 66). Much of the evidence submitted prior to the hearing referred to repossession under section 18 of the 1988 Act (Rule 65). A Notice of Directions was issued dated 15 February 2018 directing that the case was a Rule 66 case and parties should bear this in mind when considering what evidence to lead.

Documents lodged with the Tribunal were the Tenancy Agreement, the AT5, the Notice to Quit, the Section 33 Notice, certificate of execution of service of Notice to Quit and Section 33 Notice by Sheriff Officers and section 11 Notice. There was lots of evidence submitted relevant to a Rule 65 case but not to the Rule 66 Case.

The Tribunal fixed an oral hearing and this was intimated to parties. The Notice of Directions dated 15 February 2018 confirmed that the hearing would

proceed as if it were a Case Management Discussion and that a decision may be made at the hearing. The Respondent was notified by Sheriff Officers serving the hearing notification letter on 29 January 2018 that he was required to attend. No written representations were received from Respondent, the last date for these being lodged being 16 February 2018.

- The hearing took place in the absence of the Respondent. The following parties were in attendance: Jan Ordoqui (Applicant), Hilary Ordoqui (Applicant), Margaret Maguire (Supporter to Applicants). The following parties were observing: Trina Bohan Tyrie (Neighbour), Bruce Lowe (Neighbour), Emma Fursman (Dunpark Property Agents) and Leona Barnes (Dunpark Property Agents). The Applicants had wished to lead evidence from Trina Bohan Tyrie in relation to the Respondent's alleged conduct including breaches of the tenancy agreement. The Tribunal discussed at length with the Applicants the difference between a Rule 65 and Rule 66 case and wanted to afford the Applicants the opportunity to lead evidence if they wished but questioned the relevance of the witness' proposed evidence. After discussion the Applicants agreed that Ms Tyrie would attend as an observer rather than as a witness. The Tribunal explained Rule 11 regarding supporters and what a supporter could and could not do. At the outset the Tribunal discussed the Applicants expectations as the Applicants indicated that even if they succeeded in their Rule 66 case, they wanted to then pursue a Rule 65 case. The Tribunal explained their remit and that if the Applicants succeeded in getting an order for repossession then they could not then raise another repossession action using a different route in same circumstances.
- Findings in Fact

1. The Applicants' Letting Agents and the Respondent entered into a Tenancy Agreement signed on 27 March 2017 at 3.50pm. The agreement would commence on 4 May 2017 and run until 4 November 2017 and would then continue on a rolling monthly basis until ended on 'rent day' which is defined as '4<sup>th</sup> of each month.' An AT5 was signed on 27 March 2017 at 3.35pm. The Tenancy Agreement at clause 53 refers to this AT5 being received. The rent was stated to be £850 per month.

2. The Applicants served a Section 33 Notice by Sheriff Officers on 28 September 2017 detailing that vacant possession was required at 4 December and a Notice to Quit was served the same day by Sheriff Officers stating they wished possession by 4 December 2017.

3. The Applicants are entitled to the order sought for repossession.

- Reasons for Decision

The Tribunal proceeded on the basis of the written documents which were before it as detailed above. The Applicants confirmed these written documents reflected their understanding of the position. The grounds for a Rule 66 repossession order were met. There was nothing before the Tribunal challenging or disputing any of the evidence before it.

- Decision

The order for eviction/repossession is granted.

### **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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

A Mathie

**Legal Member/Chair**

**Date**

26 February 2018