



**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/19/2922**

**Re: Property at 19 Bells Mill Terrace, Winchburgh, EH52 6SD (“the Property”)**

**Parties:**

**Mrs Karen Bell, 46 Kirkhill Terrace, Broxburn, West Lothian, EH52 6JG (“the Applicant”)**

**Mr Irvin Kerr-Smith, Miss Leanne Mabon, 19 Bells Mill Terrace, Winchburgh, EH52 6SD (“the Respondent”)**

**Tribunal Members:**

**Anne Mathie (Legal Member)**

**Decision**

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

- **Background**

This is an application dated 9 September 2019 and received by the Tribunal on 18 September 2019 brought in terms of Rule 66 (Application for order for possession upon termination of a short assured tenancy) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended.

The Applicant provided with her application a copy of the tenancy agreement, a copy of the Section 33 notice addressed to each of the Respondents and a copy of the Notice to Quit addressed to each of the Respondents.

By letter dated 19 September 2019 the Tribunal requested further information from the Applicant namely copies of the Notices to Quit (These do appear to have been lodged with the original application) and a copy of the Section 11 Notice provided to the Local Authority.

By email dated 23 September 2019 the Applicant advised that she had already sent copies of the Notices to Quit with the original application and would look into providing a copy of the Section 11 Notice. A copy of the Section 11 Notice was received by the Tribunal on 1 October 2019.

By letter dated 16 October 2019, the Tribunal requested further information from the Applicant, namely *"evidence of service of the Notice to Quit and Section 33 Notice on each of the tenants."*

The Applicant responded by email of 17 October 2019 to advise that evidence of service of the Notice to Quit and Section 33 Notice on each tenant had been sent on 9 September 2019 with the original application. The Tribunal responded by email of 17 October to advise that the Tribunal did not receive evidence of service of the Notice to Quit and Section 33 Notice with the original application and that this information was not currently contained within the casefile for the application. The Applicant emailed again on 17 October 2019 to advise that she had copies of the information that the Tribunal required and wanted to check the correct address to send this to.

The Tribunal received further copies of the Notices to Quit and Section 33 Notices from the Applicant on 21 October 2019 but emailed the Applicant on the same date to advise that the Tribunal was already in receipt of these documents and that the Tribunal was looking for evidence of how these notices had been served.

The Applicant emailed on 21 October 2019 advising that the notices were sent by Royal Mail recorded delivery on 17 May 2019.

The Tribunal wrote again to the Applicant on 4 November 2019 asking for proof of delivery of the Notices from Royal Mail.

The Applicant emailed the Tribunal on 5 November 2019 advising that, as it had been more than six months, Royal Mail no longer held evidence of the delivery of these Notices.

The case was accepted and a Case Management Discussion was assigned for today. Notification of the application and today's Case Management Discussion were served on the Respondents by Sheriff Officers on 6 December 2019. In the notification the Respondents were advised that they were required to attend today's Case Management Discussion. They were asked to lodge any written representations by 26 December 2019. The Respondents were also advised that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order or payment order. They were advised that if



they did not attend the Case Management Discussion this would 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 that the procedure has been fair.

- **The Case Management Discussion**

The Case Management Discussion took place today at Riverside House, Gorgie Road, Edinburgh. The Applicant attended in person with her husband, Victor Bell, as a supporter. Both Respondents attended but had a young child with them so Mr Kerr-Smith waited in the waiting room with the child. The facts of the case were discussed along with the documents lodged. The Tribunal gave an opportunity for Ms Mabon to swap places with Mr Kerr-Smith if they wished but this opportunity was declined as not being necessary. Discussion took place regarding the lack of evidence of service of the Notices. Ms Mabon confirmed that the Notices had been received and that she was in agreement that the Property should be returned to the Applicant. She was struggling to get help from the Local Authority in finding alternative accommodation as no eviction order was in place.

- **Findings in Fact**

The parties entered into a Short Assured Tenancy Agreement with an initial term from 17 October 2016 to 18 June 2017. If the agreement did not end at the end date it would continue on a monthly basis thereafter until either party giving no less than two months notice to the other party.

While no AT5 was lodged, as the Applicant could not find a copy, the tenancy agreement states at page 9 that an AT5 was served prior to the creation of the tenancy. There was no dispute that an AT5 had been served.

A valid Notice to Quit and Section 33 Notice was served on each of the Respondents. There was no proof of service of these but the Respondents accepted that these Notices had been served.

- **Reasons for Decision**

In terms of Section 33 of the Housing (Scotland) Act 1988, the Tribunal shall make an order for possession of the property let on the tenancy if:

- (a) The short assured tenancy has reached its ish;
- (b) Tacit relocation is not operating; and
- (c) The landlord has given notice to the tenants stating that (s)he requires possession of the house.

All of the above criteria have been satisfied in this application and accordingly the Tribunal shall make an order for possession.

- **Decision**

The Tribunal makes an order for possession of the Property let on the tenancy as sought in this application.

## 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.

Anne Mathie

Legal Member/Chair

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Date

10 January 2020