



**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 as amended (“1988 Act”)**

**Chamber Ref: FTS/HPC/EV/18/1992**

**Re: Flat 25/5, West Pilton Grove, Edinburgh, EH4 4EP (“the Property”)**

**Parties:**

**Mr John McAreavey, 32 Groathill Road North, Edinburgh, Midlothian, EH4 2SL (“the Applicant”)**

**Mr Brian Crosbie, Flat 25/5, West Pilton Grove, Edinburgh, EH4 4EP (“the Respondent”)**

**Tribunal Member:**

**Pamela Woodman (Legal Member)**

**Present:**

The case management discussion in relation to case reference FTS/HPC/EV/18/1992 took place at 2.00pm on Thursday 27 September 2018 in room D25, George House, 126 George Street, Edinburgh EH2 4HH (“**the CMD**”). The Applicant was represented by Neil Matheson (“**Mr Matheson**”) of TC Young Solicitors (“**the Applicant’s Representatives**”). The Respondent was present in person and was represented by David Patterson (“**Mr Patterson**”), a lay representative, at the CMD. The clerk to the Tribunal was Linda O’Neill.

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:**

**BACKGROUND**

1. The Applicant (through the Applicant’s Representatives) made an application to the Tribunal under section 33 of the Housing (Scotland) Act 1988 (“**1988 Act**”). The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“**2017 Regulations**”). More specifically, the application was made in terms of rule 66 (*Application for*

*order for possession upon termination of a short assured tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an order for possession of the Property.
3. The application made by the Applicant's Representatives on behalf of the Applicant was dated 1 August 2018 and was accompanied by documentation to support the application.
4. The application was accepted by the Tribunal on 14 August 2018.
5. By letter dated 4 September 2018, the Tribunal notified the date, time and place of the CMD to the Respondent and the Applicant's Representatives. Sheriff officers (Graham Stewart & Co) provided a certificate of intimation to the Tribunal certifying that this letter (and the accompanying papers) were served on the Respondent by delivering them to him personally on 6 September 2018.
6. This decision arises out of the CMD

### **KEY RELEVANT LEGAL PROVISIONS**

7. Section 33(1) of the 1988 Act is in the following terms:

"Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied -

- (a) that the short assured tenancy has reached its end;
- (b) that tacit relocation is not operating; and
- (c) [REPEALED]
- (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house"

8. Rule 17(4) of the HPC Rules is in the following terms:

"The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision."

### **DISCUSSION AT THE CMD**

9. Upon being requested to do so, the Respondent confirmed that he had received the application form and accompanying documentation, including (but not limited to) copies of the following:
  - a. short assured tenancy agreement between the Applicant and the Respondent dated 29 July 2015 ("**Tenancy Agreement**");
  - b. notice to quit issued by the Applicant and addressed to the Respondent at the Property dated 29 March 2018 ("**Notice to Quit**"); and

c. section 33 notice issued by the Applicant and addressed to the Respondent at the Property dated 29 March 2018 ("**Section 33 Notice**").

10. The Respondent confirmed that he had a short assured tenancy and that he had received the original Notice to Quit and Section 33 Notice.
11. The Respondent confirmed that he had not provided written representations in response to the Tribunal's invitation for him to do so. He explained that he had not done so was because he was not able to find a lawyer who was able to see him in time and he was dyslexic.
12. It was submitted by and on behalf of the Respondent that the Tenancy Agreement had been invalid since day 1 on the basis that (a) there was no heating in the Property and, despite repeated requests from the Respondent, the Applicant had refused to install central heating, and (b) the Applicant had failed to provide all of the services which he was required to provide in terms of the Tenancy Agreement.
13. It was also submitted by and on behalf of the Respondent that these alleged breaches of the Tenancy Agreement would prevent the Applicant from having the ability to terminate the Tenancy Agreement.
14. The Respondent advised that he had previously lived in the neighbouring property prior to renting the Property and that the previous tenants of the Property had also had problems with heating (or the lack of it). He also advised that his three children and two dogs lived with him and that he had been unable to find another suitable property to rent. He noted that, if he was required to remove from the Property (i.e. was evicted), he would likely end up in bed and breakfast accommodation as there was not sufficient alternative local authority housing available. The Respondent indicated that he was deeply unhappy about the possibility of having to move into such accommodation in light of the types of people with whom his children might come into contact. He also indicated that he did not want to move into bed and breakfast accommodation because he would not be able to take his dogs with him.
15. The Respondent confirmed that he continued, as at the date of the CMD, to live in the Property and that rent had been paid by him or on his behalf to the Applicant. It was not established during the CMD, it not being relevant to the application under consideration, whether or not the rent had been fully paid up to date.
16. The Respondent indicated that the Applicant was in the process of seeking to remove tenants from around 200 properties.
17. The Respondent stated that he was entitled to a fair hearing and that he was entitled to have legal representation. When asked to clarify what he was requesting, he confirmed that he would like an adjournment in order to seek legal representation and legal aid. The Respondent confirmed that he had not spoken to Citizens Advice to obtain any advice.
18. Mr Matheson submitted that he was seeking an order for possession and that the matters raised by the Respondent with regard to heating and other services were not relevant. He further submitted that the Applicant was the titleholder to the

Property and that he was entitled to recover possession of the Property given that it had been let on a short assured tenancy.

## **FINDINGS OF FACT**

19. The Legal Member noted that clause EIGHT of the Tenancy Agreement (which the Respondent had signed) stated that “The Tenant accepts the subjects of let as being in good tenantable condition and repair and reasonably fit for human habitation...”
20. The Legal Member was satisfied, on the balance of probabilities, that:
  - a. the tenancy constituted by the Tenancy Agreement was a short assured tenancy for the purposes of the 1988 Act; and
  - b. the Tenancy Agreement had not been terminated (actually or constructively) by virtue of any alleged breach by the Applicant of obligations to provide heating and other services but, if there had been such a breach (on which no opinion, comment or decision was given by the Legal Member), it was possible that other remedies might have been available to the Respondent which the Respondent did not appear to have sought to pursue.
21. The Respondent had entered into a “short assured tenancy” which, by its very nature, envisaged a “no-fault” ground for possession by the Applicant at its ish. In other words, this type of tenancy entitled a landlord to recover possession of his property after the original period of the lease had expired (which was, in this case 31 January 2016) and the landlord did not have to give a reason to the tenant (or otherwise have a specific reason) in order to do so. The landlord would, however, require to comply with the provisions of section 33 of the 1988 Act (as set out in paragraph 7 above).
22. The Notice to Quit contained the information prescribed to be included in any notice to quit by The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988. Such prescribed information includes the following statement: “If a tenant does not know what kind of tenancy he has or is otherwise unsure of his rights he can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the Legal Aid legislation. A tenant can also seek help from a Citizens Advice Bureau or Housing Advisory Centre.” The Respondent had received the Notice to Quit on 30 March 2018 but did not appear to have taken any steps to seek legal advice until after he had received notification of the CMD.
23. The Section 33 Notice stated that the Applicant “required possession” of the Property as was necessary in terms of section 33(1)(d) of the 1988 Act.
24. The Notice to Quit and Section 33 Notice were served by Royal Mail’s “Signed For” service and the “Track your Item” printout provided confirmation that they had been signed for by “CROSBIE” on 30 March 2018.

25. The Notice to Quit and Section 33 Notice notified the Respondent that he was required to quit and remove from the Property on or before 31 May 2018 and so both provided the Respondent with two months' notice.
26. Accordingly, the Legal Member was satisfied that the Notice to Quit and Section 33 Notice were valid and properly served.
27. In terms of the Tenancy Agreement, the original period of the tenancy expired on 31 January 2016, after which time the tenancy continued monthly unless terminated in writing by either party giving not less than 2 months' prior written notice to the other ("**Termination Right**"). Therefore, 31 May 2018 was a possible ish (i.e. termination) date (31 May 2018 being 30 months after 31 January 2016) and, on service of the valid Notice to Quit, 31 May 2018 became the actual ish date of the Tenancy Agreement (and so the contractual short assured tenancy terminated on that date). The Notice to Quit prevented the doctrine of tacit relocation (i.e. silent or automatic renewal) operating.
28. As confirmed by the Respondent, he had not exercised his Termination Right or otherwise sought to terminate the Tenancy Agreement as a result of the alleged breach by the Applicant of obligations to provide heating and other services, or for any other reason.
29. A notice to the local authority under section 11 of the Homelessness etc. (Scotland) Act 2003 (as required in terms of section 19A of the 1988 Act) had been sent by the Applicant's Representatives on 1 August 2018.
30. The Applicant had no legal duty, obligation or responsibility to ensure that the Respondent did not become homeless (unintentionally or otherwise).

#### **REASONS FOR DECISION**

31. The application form and other documentation provided by the Applicant's Representatives met the requirements of rule 66 of the HPC Rules.
32. The overriding objective of the Tribunal (in terms of rule 2 of the HPC Rules) was to deal with proceedings justly. The Legal Member noted that two of the specific elements of dealing with proceedings justly were "using the special expertise of the First-tier Tribunal effectively" and "avoiding delay, so far as compatible with the proper consideration of the issues".
33. Taking the overriding objective into account, the Legal Member was satisfied that it would be futile to refer the application to a further case management discussion or hearing in order to allow the Applicant further time to attempt to seek and obtain legal representation and legal aid. This was because the Legal Member was satisfied that the requirements for the grant of an order for possession as set out in section 33(1) of the 1988 Act had been met and, accordingly, the Tribunal was required to make an order for possession of the Property. In addition, the Respondent had received the Notice to Quit and Section 33 Notice on 30 March 2018 and so had had almost 6 months within which to seek legal advice but did not appear to have attempted to do so until recently. The Legal Member was

satisfied that the Respondent had received a fair hearing and that she had sufficient information in order to make a decision.

## DECISION

34. The Tribunal decided that an order be granted against the Respondent for possession of the Property under section 33 of the 1988 Act, which order was not to be executed prior to 12 noon on Tuesday 30 October 2018.
35. The order referred to in the preceding paragraph was intimated orally to the parties by the Legal Member during the CMD (after it resumed following adjournment).

## Right of Appeal

**In terms of Section 46 of the Tribunals (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.**

Pamela Woodman

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Legal Member

27. 9. 18  
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Date