



**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/18/2752

Re: Property at 4/1 37 Elliot Street, Glasgow, G3 8GH (“the Property”)

Parties:

Mr Michael Reynolds, 49 Sandford Road, Wareham, Dorset, BH20 4DQ (“the Applicant”)

**Mr Janarthanan Rengasamy, Mrs Saranyadevi Janarthanan, B38-001,
Provident Cosmo City, Pudupakkam, Chennai, 603103, India (“the Respondents”)**

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondents)

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

Background

1. This is an application by the Applicant for an order for possession on termination of a short assured tenancy in terms of rule 66 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Procedure Rules”). The tenancy in question was a Short Assured Tenancy of the Property by the Applicant to the Respondents commencing on 12 July 2016.
2. The application was dated 15 October 2018 and lodged with the Tribunal shortly thereafter.
3. The application relied upon Notices to Quit dated 12 August 2018 and notices in terms of section 33 of the *Housing (Scotland) Act 1988* dated 10 August 2018 providing the Respondents with notice (respectively) that the

Applicant sought to terminate the Short Assured Tenancy and have the Respondents vacate, each by 12 October 2018. Evidence of service of the said notices by Sheriff Officers upon the Respondents on 10 August 2018 was provided with the application.

4. Evidence of a letter (not in standard form but bearing the material details) dated 12 October 2018 in terms of section 11 of the Homelessness Etc. (Scotland) Act 2003 served upon Glasgow City Council was provided with the application.

The Hearing

5. On 12 December 2018, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at the Glasgow Tribunals Centre, I was addressed by Finlay Dunsmore, Credit Controller of Letit, the letting agent for the Applicant.
6. There was no appearance by the Respondents. The Applicant's agent stated that he had spoken to the First Respondent on Monday, 3 December 2018. The First Respondent had called to make payment of arrears but, after attempting payment on two credit cards (one declined, and one with incomplete details provided to the Applicant's agent), he was provided with Letit's bank details. The Applicant's agent stated that no payment had been received to date but, in any case, he sought the order for eviction under section 33 of the 1988 Act in any case given the history of the matter. The Applicant's agent stated that he had not made any agreement with the First Respondent in regard to discontinuing the application should arrears be paid. Indeed, the Applicant's agent said that there was no discussion of the CMD or the application during the call.
7. The Applicant's agent stated that he had only ever had contact with the First Respondent and not with his wife, the Second Respondent.
8. I was advised of no contact received from the Respondents by the Tribunal since the intimation of the CMD date and papers.
9. The papers disclosed a confused and confusing position from the Respondents. I noted emails from the First Respondent in the application papers, both to the Tribunal and the Applicant's agent. The Respondents appeared not to be residing at the Property due to having returned to India. It was unclear whether they had intended to return to India when they did; whether their visas had expired and they had returned to India to renew them and return to the UK (whether or not Glasgow); or whether they were stuck in India unintentionally due to a visa problem. More recently, in an email to the Tribunal of 9 November 2018, the First Respondent stated that he "had reached to London and working on one of my business proposals" (*sic*). In a further email to the Tribunal of later that day, however, the First Respondent reiterated his address as the residential address in Chennai, India in the application. The Applicant's agent stated that the First Respondent claimed to be in London during his

call of 3 December 2018. At no time has the First Respondent confirmed an address in London to either the Applicant's agent or the Tribunal.

10. As a whole, in the emails in the application papers the First Respondent did not go as far as to agree that their tenancy had come to an end but did not appear to explain why they wished to continue as tenants for a property which they did not appear to be able to return to and, at least in regard to the First Respondent's claims to be in London, was in the wrong city. In the first email of 9 November 2018 to the Tribunal, the First Respondent stated that he had assured Letit that he was clearing "my rental arrears in coming days" and sought the application discontinued. The Applicant had declined to do so and the Applicant's agent today submitted that no such payment of arrears had been made and, in any case, the application was insisted upon. Nowhere in the application or correspondence could I discern any defence to the application being put forward by the Respondents.
11. In regard to service, I was consulted prior to intimation of the CMD on appropriate service. Email addresses for both the Respondents were held and both were asked to consider to intimate papers by email. The request to the First Respondent was not clearly responded to (though the email itself was replied to). The Second Respondent made no response to any emails, including that requesting consent to intimate by email. I thus requested the Tribunal to ensure that the papers assigning the CMD were intimated by *International Signed For* post through the Royal Mail but, for completeness, also sent by email to both the Respondents. The emails were sent on 15 November 2018 and on the same date the papers were posted from the West Regent Street post office. I checked Royal Mail's website prior to commencement of the CMD and it reported service of both sets of papers at the Respondents' address in Chennai on 22 November 2018. I was satisfied that competent intimation had occurred and, in any case, the Respondents had been fully informed of the CMD and had made no attempt to provide submissions to the Tribunal in defence of the application.
12. In all the circumstances, I was satisfied in the circumstances to proceed in the absence of the Respondents.

Findings in Fact

13. On 12 July 2016, the Applicant let the Property to the Respondents by lease with a start date of 12 July 2016 and an expiry date of 12 January 2016, which was then to "continue... on a month to month basis" ("the Tenancy").
14. The Tenancy was a Short Assured Tenancy in terms of the *Housing (Scotland) Act 1988* further to the Applicant issuing the Respondents with a notice under section 32 of the 1988 Act (an "AT5") on 12 July 2016, prior to commencement of the Tenancy.

15. On 10 August 2018, Letit, the Applicant's letting agent, drafted Notices to Quit in correct form (post-dated to 12 August 2018) and addressed to each of the Respondents, giving the Respondents notice that the Applicant wished them to quit the Property by 12 October 2018.
16. On 10 August 2018, the said letting agent drafted Section 33 Notices under the 1988 Act addressed to each of the Respondents, giving the Respondents notice that the Applicant required possession of the Property by 12 October 2018.
17. 12 October 2018 is an ish date of the Tenancy.
18. On 10 August 2018, Sheriff Officers acting for the Applicant competently served each of the notices upon the Respondents. The Respondents were thus provided with sufficient notice of the Applicant's intention that the Tenancy was to terminate on 12 October 2018.
19. On 15 October 2018, the notice period under the notices having expired, the Applicant raised proceedings for an order for possession with the Tribunal, under Rule 66, the grounds of which being that the Tenancy had reached its ish; that tacit relocation was not operating; that no further contractual tenancy was in existence; and that notice had been provided that the Applicant require possession of the Property all in terms of section 33 of the 1988 Act.
20. A letter bearing the required terms of section 11 of the *Homelessness Etc. (Scotland) Act 2003* was served upon Glasgow City Council on 12 October 2018 on the Applicant's behalf.
21. On 15 November 2018, the Tribunal intimated the application and associated documents upon the Respondents by *International Signed For* delivery, providing the Respondents with sufficient notice of the CMD of 12 December 2018.

Reasons for Decision

22. The application was in terms of rule 66, being an order for possession upon termination of a short assured tenancy. I was satisfied on the basis of the application and supporting papers that the necessary notices had been served with sufficient notice, the Respondents were extending no defence or dispute to the notices, and thus the requirements of the 1988 Act had been complied with.
23. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. I was thus satisfied to grant an order for possession.

Decision

24. In all the circumstances, I make the decision to grant an order against the Respondents for possession of the Property under section 33 of the Housing (Scotland) Act 1988 in normal terms.

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.

Joel Conn

Legal Member/Chair

Date

12 December 2018