

**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/20/1232

Re: Property at 54 Eildon Road, Hawick, TD9 8ES (“the Property”)

Parties:

Mr David Taylor, Bridgehaugh Mill, Earlston, TD4 6AP (“the Applicant”)

Miss Shelley Millar, 54 Eildon Road, Hawick, TD9 8ES (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

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

Background:

The application for an order for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988 (the 1988 Act) was made to the First-tier Tribunal for Scotland Housing and Property Chamber (the Tribunal) on 18 May 2020 by the Applicant's representative PC McFarlane under rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the Rules of Procedure). The Applicant lodged with the application the Short Assured Tenancy Agreement for the property commencing on 31 October 2011 and with an ish date of 1 May 2012, Title Sheet, Notice to Quit dated 21 February 2020 for the date of 1 May 2020, Notice in terms of S 33 of the 1988 Act for 1 May 2020, Proof of service of same by recorded delivery sent 21 February 2020 and S 11 Notice with proof of service by email to the local authority as well as a copy of the AT5 signed on 31 October 2011.

The documents are referred to for their terms and held to be incorporated herein.

A Case Management Discussion (CMD) was scheduled for 20 August 2020 and both parties notified of the date and time. Service on the Respondent by Sheriff Officers was confirmed to have taken place on 30 July 2020 by personal service to the Respondent, who had informed the Sheriff Officers that she would be passing the documentation to her solicitors. The intimation to the parties included the information 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.

The Respondent had been given the 14 days notice required in Rule 24 of the Rules of Procedure. There was no intimation to the Tribunal from any firm of solicitors intimating that they are acting for the Respondent. No contact was made by the Respondent with the Tribunal.

The Case Management Discussion:

The Respondent did not attend. Mr Valentine, the Applicant's representative attended via telephone link. On behalf of the Applicant Mr Valentine moved the application.

He confirmed that the original Short Assured Tenancy had continued on tacit relocation annually and was only terminated as a contractual tenancy by the Notice to Quit issued and served on 21 February 2020 for the end date of 1 May 2020, which is an ish date. A S 33 Notice had been served at the same time for the same date. There had been no other contractual tenancy entered into between the parties and the Respondent had stopped payment of rent in October 2019. She was still occupying the property. Her solicitors had contacted the Applicant's solicitors on 5 August 2020 requesting a copy of the recorded delivery confirmation of the Notice to Quit and the S 33 Notice. This together with the signed for track and trace confirmation of 22 February 2020 had been sent to the Respondent's solicitors on 11 August 2020 but no further correspondence had been received from them.

Mr Valentine further confirmed at the CMD that he was also instructed by Sally Taylor who is named as a landlord on the lease and that he can confirm she supported the application being made in the name of Mr David Taylor only as he is the sole owner of the property.

The Respondent did not attend and made no representations at the CMD.

Findings in Fact:

1. The Applicant and the Respondent entered into a Short Assured Tenancy on for an initial period of 31 October 2011 to 1 May 2012 (clause 1).
2. Document AT5 was receipted and signed by the Respondent on 31 October 2011.
3. The tenancy agreement made no provision for a month to month continuation of the tenancy and thus tacit relocation operates on an annual basis with an ish date of 1 May of the year.
4. In terms of Clause 11 either party may terminate the lease by giving at least one month's notice in writing to the other party .

5. Notice to Quit was received by the Respondent on 22 February 2020 advising of the termination of the tenancy on the termination date of 1 May 2020.
6. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was received by the Respondent on 22 February 2020 advising of the intention to repossess the premises on 1 May 2020.
7. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
8. The Respondent continued to occupy the property at the date of the CMD.
9. No other contractual agreement was entered into between the parties and the Respondent stopped payment of rent since October 2019.

Reasons for the Decision:

The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

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

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and all essential facts of the case were sufficiently evidenced to make the relevant findings in fact to determine the case.

The Respondent made no representations and, although the information shows that she had clearly instructed a solicitor to act on her behalf in order to write to the Applicant's solicitor, no intimation of legal representation for the proceedings was given to the Tribunal. The Respondent did not participate in the CMD. The application is thus not opposed.

The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the Respondent and the information given at the CMD.

In terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its ish
2. That tacit relocation is not operating
3. That no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
4. That the landlord has given to the tenant notice that he requires possession of the house.

The Tribunal was satisfied on the basis of the documents lodged that that all requirements for recovery of possession in terms of the Housing Scotland Act 1988 had been complied with

The tenancy document and AT5 document show that the tenancy is a Short Assured Tenancy which has reached its ish.

A Notice to Quit and a Notice in terms of S 33 (1) (d) of the Housing (Scotland) Act 1988 had been served on the Respondent on 21 February 2020 by recorded delivery which was signed for by the Respondent on 22 February 2020.

The Tribunal is satisfied that these gave the required 2 months notice in terms of S33 of the Act and the required 1 month notice in the Notice to Quit in terms of clause 11 of the lease.

The lease clearly relies on an annual tacit relocation of the tenancy until terminated by a written notice of at least 1 month. Notice to Quit was issued with more than 2 months notice period for the ish date of 1 May 2020. Tacit relocation thus no longer operates.

The Tribunal concluded it was not necessary to fix a hearing as the Respondent had not attended the CMD and the documents lodged evidenced sufficiently the matters required to determine whether the legal tests for an order in terms of S 33 of the Housing (Scotland) Act 1988 are met.

If the tests of S 33 (1) of the Housing (Scotland) Act 1988 are met there is no discretion for the Tribunal and the order must be granted.

The landlord had served a notice to quit with the required 2 months notice period for the ish on 8 June 2019 and thus tacit relocation does not operate. The landlord had served on the Respondents a notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 with the required 2 months notice period.

The Tribunal has no discretion in the matter. The conditions for an order for possession in terms of S 33 (1) of the Housing (Scotland) Act 1988 have been evidenced by the Applicant in the documentation lodged. Thus the Tribunal grants the order for possession as per the 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.

**Petra Hennig McFatridge
Legal Member**

**20 August 2020
Date**