



**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/19/2426

Re: Property at 15 Whitehill Street, Edinburgh, EH21 8RB (“the Property”)

Parties:

**Mr William Hill, Mrs Margaret Hill, 10 Klondyke Street, Newcraighall,
Edinburgh, EH21 8SQ (“the Applicant”)**

**Ms Alexandra Dow, 15 Whitehill Street, Edinburgh, EH21 8RB (“the
Respondent”)**

Tribunal Members:

Lesley Johnston (Legal Member)

Decision

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

Background

By application dated 2 August 2019 (lodged with the Tribunal on 5 August 2019) the Applicants seek an Order for possession of the property at 15 Whitehill Street, Edinburgh, EH21 8RB (‘the property’) in terms of section 33(1)(d) of the Housing (Scotland) Act (‘the Act’).

The application is made in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (‘the Rules’).

The Respondent is Alexandra Dow. She is the Tenant at the property.

The Case Management Discussion

The case called for a Case Management Discussion on 4 October 2019 at 2pm in George House, 126 George Street, Edinburgh.

The Applicant was represented by Ms. Ridley, Solicitor, Blacklocks Solicitors. The Respondent was personally present and was accompanied by a Supporter in terms of Rule 11. The Supporter was Ms. Berwick.

Submissions

Ms Ridley asked the Tribunal to grant the application on the basis that the requirements of section 33 of the Act had been complied with. She advised that the lease between the parties commenced on 1 February 2006 for a period of 6 months. The lease was silent as to what should happen after the initial period of 6 months and therefore, tacit relocation operated on a six monthly basis, allowing the lease to be brought to an end on the 1st of August or 1st of February each year. The Notice to Quit and Section 33 Notice were served on 15 May 2019 and were signed for by the Respondent as having been received on 16 May 2019. The Notices had an end date of 1 August and had therefore been served to coincide with the end of date of the tenancy on 1 August.

Ms Ridley advised that proceedings had been raised by the Applicants because the Respondent remains within the property. She advised that the Applicants were not seeking any payment from the Respondent, it was simply the case that the Applicants wished to bring the lease to an end.

Ms Dow advised that Mrs Hill had made her aware last year that she would be bringing the tenancy to an end in 2019 because of new tax rules. Ms Dow advised that she had lived in the property for 14 years and was a kinship carer for her grandchildren. When she commenced the lease at the property the Applicants had told her that this would be a tenancy for life. She advised that she has had four mini-strokes this year and has been liaising with her Community Practice Nurse, the council and social work to find a new house. In the meantime, she has been paying rent and has continued to pay rent. At the beginning of this year, Mrs Hill told the Respondent that she would give her until August to find an alternative property.

Ms Dow advised that having been on the waiting list for a new house for a while, she has now been offered a house in Jedburgh and gets the keys on 5 November 2019. Her family are excited about moving there, although it does mean a change of school for her grandchildren. The Respondent showed a letter to the Tribunal confirming that she had been successful in securing the new property.

Ms. Ridley advised the Respondent that the Applicants recognised that the Respondent had been a good tenant. She advised that, because any Order made by the Tribunal does not take effect for a period of 30 days, the Respondent would likely have moved out of the property by the time the Order can be enforced.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Landlords are the heritable proprietors of the property;
2. By lease dated 10 January 2006 the Applicants and the Respondent entered into a tenancy agreement in respect of the property;
3. The term of the lease was six months from 1 February 2006;
4. The period of the lease was for a period of not less than six months;
5. An AT5 Notice was served on 10 January 2006 and signed by the parties;
6. The Applicants served a Notice to Quit and Section 33 Notice on the Respondent on 15 May 2019 by Recorded Delivery post which was signed for by the Respondent on 16 May 2019;
7. A section 11 Notice was issued by the Applicants' agent to the council on 20 August 2019;
8. The application was made to this Tribunal on 5 August 2019;
9. The Respondent has not removed from the property and continues to reside there.

Decision

The Tribunal is satisfied that the lease between the parties is a Short Assured Tenancy in terms of Section 32 of the Act. That being the case, the Applicant may seek an Order from the Tribunal under section 33 of the Act.

In terms of section 33 of the Act, the Tribunal shall make an Order for Possession of the property if the Tribunal is satisfied that:

- (a) The short assured tenancy has reached its ish;
- (b) That tacit relocation is not operating;
- (c) That the Landlord has given to the tenant notice stating that he requires possession of the house.

The Tribunal is satisfied that the Application meets the terms of section 33. The lease reached its ish on 1 August 2019. Tacit relocation is not operating. The Notice to Quit and Notice in terms of section 33 of the Act were served on the Respondent giving not less than two months' notice.

In these circumstances, the Tribunal has no discretion and therefore grants the Order for Possession.

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.

Lesley Johnston

Legal Member/Chair

4 / 10 / 2019

Date