

**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/20/0210

Re: Property at 200B Montrose Street, Brechin, DD9 7DZ (“the Property”)

Parties:

Mr Barry Dunlop, Collierhall Farm, Douglas Water, Lanark, ML11 9TU (“the Applicant”)

Mr Paul Gerrard, 200B Montrose Street, Brechin, DD9 7DZ (“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.

I Background:

- a. 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 Act) was made 22 January 2020. The Applicant lodged with the application the Short Assured Tenancy Agreement commencing on 7 November 2014 as well as a copy of the AT5, the Notice to Quit dated 22 October 2019 and S 33 Notice dated 22 October 2019 together with execution of service by Sheriff Officers on 23 October 2019. The bundle also contained the S 11 Notice to the Local Authority under the Homelessness etc (Scotland) Act 2003, a rent statement covering the period from 22 July 2017 to 22 January 2020 and a copy of a decision of the First-tier Tribunal of 26 September 2019 rejecting a previous application under Ref EV/19/2836. On 5 February 2020 the Applicant's representatives confirmed that the application was made under Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the Procedural Rules).

- b. A Case Management Discussion (CMD) was scheduled for 2 April 2020. Due to the Covid -19 lockdown restrictions the CMD was postponed. On 15 June 2020 the Respondent was notified of the new date of the CMD by recorded delivery letter in terms of Rules 6 (1) (a) (ii) and 17 (2) of the Procedural Rules. The Respondent was advised the CMD would take place on 15 July 2020 at 10:00 hours by telephone conference. In terms of Rule 17 (1) (a) of the Procedural Rules a CMD may be held by conference call. He was provided with the required information to participate in the CMD.
- c. The Tribunal thus considers that the appropriate notice has been given to the Respondent.
- d. No representations were received from the Respondent. The Respondents had not contacted the Tribunal prior to the CMD. The Tribunal started the CMD at 10:10 hours having given the Respondent a further 10 minutes time to join the conference call. The Respondent did not participate in the conference.

II The Case Management Discussion:

- a. The Respondent did not participate. Mrs Davie of Lettings Direct participated on behalf of the Applicant. On behalf of the Applicant Mrs Davie moved the application.
- b. She stated that after the first eviction action had been rejected in September 2019 due to a problem with the ish date in the Notice, further efforts had been made to engage with the Respondent. There had been no recent contact from the Respondent and no payments had been received since the application was made. She advised the arrears of rent now stand at £7,200. She referred the Tribunal to the documents lodged with the application, which are referred to for their terms and held to be incorporated herein.
- c. She confirmed that the original Short Assured Tenancy was only terminated as a contractual tenancy by the Notice to Quit served on 23 October 2019 for the end date of 7 January 2020 as the previous Notice to Quit erroneously had given a date which was not an ish date. A further S 33 Notice had been served at the same time for the same date as the Notice to Quit. There had been no other contractual tenancy entered into between the parties. There were no representations from the Respondent..

III Findings in Fact:

1. The Applicant and the Respondent entered into a Short Assured Tenancy on for an initial period of 7 November 2014 to 7 May 2015 (Clause 1).
2. Document AT5 was receipted and signed by the Respondent on 7 November 2014.

3. Clause 37 states “In the event that neither party terminates the Agreement, the Agreement and occupation of the Premises by the Tenant will continue on a rolling monthly basis on the same terms and conditions as set out in this Agreement. The rolling contract may be ended by: (21) the Landlord giving the Tenant two months' notice in writing to terminate the tenancy. (22) The Tenant giving the Landlord one months' s' notice in writing to terminate the tenancy.”
4. The notice period was 2 months.
5. Notice to Quit was served on the Respondent by Sheriff Officers on 23 October 2019 advising of the termination of the tenancy on the termination date of 7 January 2020.
6. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent by Sheriff Officers on 23 October 2019 advising of the intention to repossess the premises on 7 January 2020.
7. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
8. No further contractual tenancy is in existence
9. The Respondent continued to occupy the property at the date of the CMD.

IV Reasons for the Decision:

a) 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.

b) 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.

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

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

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

f) In terms of S 33 (1) of the Act 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.

g) The changes to the Act introduced by Schedule 1 paragraphs 3 and 4 of the Coronavirus (Scotland) Act 2020 do not apply to this case as the notice issued in this case was issued before the Coronavirus (Scotland) Act 2020 came into force on 7 April 2020.

h) The tenancy document and AT5 document show that the tenancy is a Short Assured Tenancy which has reached its ish. The original ish date for the tenancy was 7 May 2015.

i) In terms of Clause 37 of the Tenancy Agreement, the agreement then continued from month to month until terminated by the Notice to Quit which gives 2 months' notice. The contractual tenancy was correctly terminated on 7 January 2020 by the Notice to Quit served on 23 October 2019. The landlord had served a notice to quit with the required 2 months notice period for the ish on 7 January 2020.

j) Thus tacit relocation does not operate.

k) The landlord had served on the Respondents a notice in terms of S 33 (1) d of the Act with the required 2 months' notice period. This notice was served on 23 October 2019 for a date of 7 January 2020.

l) No further contractual tenancy was entered into. In terms of S 16 of the Act the tenancy continued as a statutory assured tenancy after the contractual short assured tenancy was terminated by the Notice to Quit. .

n) If the tests of S 33 (1) of the Act are met there is no discretion for the Tribunal and the order must be granted. The conditions for an order for possession in terms of S 33 (1) of the Act have been evidenced by the Applicant by the documentation lodged as stated above. The Tribunal was satisfied on the basis of the documents lodged that that all tests for recovery of possession in terms of S 33 of the Act had been met.

V Decision

Thus the Tribunal grants the order for recovery of 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

**Petra Hennig McFatridge
Legal Member**

**15 July 2020
Date**