



**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/19/1487

Re: Property at 11 Robertson Street, Dundee, DD4 6EL

Parties:

**Mr Oluseye Mustapha, Majesty Serviced Apartments, Cirrus Building, 6
International Avenue, Dyce Drive, Aberdeen, AB21 0BH (“the Applicant”)**

Lynne Robertson, 11 Robertson Street, Dundee, DD4 6EL (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an order for repossession of the property
against the Respondent.**

Background

- 1 By application dated 6 May 2019 the Applicant sought an order for recovery of possession of the property under section 33 of the Housing (Scotland) Act 1988. The Applicant submitted the following documentation to accompany the application:-
 - a. Copy Short Assured Tenancy Agreement between the Applicant and Respondent dated 3rd October 2017;
 - b. Copy AT5 Notice dated 3rd October 2017;
 - c. Copy Notice to Quit dated 22nd February 2019 terminating the tenancy as at 2nd May 2017;
 - d. Copy Section 33(1)(d) Notice dated 22 February 2019 requiring the Respondent to leave as at 3 May 2019;

- e. Sheriff Officers Certificate of Service dated 25th February 2019 confirming service of the Notice to Quit and Section 33(1)(d) Notice upon the Respondent; and
 - f. Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to Dundee City Council.
- 2 By Notice of Acceptance of Application dated 23rd May 2019, the Legal Member with delegated powers of the Chamber President considered that there were no grounds for rejection of application. A Case Management Discussion was therefore assigned for the 9th July 2019.
 - 3 The application paperwork together with notification of the Case Management Discussion was subsequently served upon the Respondent by Sheriff Officers on 5th June 2019.

The Case Management Discussion

- 4 The Case Management Discussion took place on 9th July 2019 at Caledonian House, Dundee. The Respondent was present and accompanied by her representative Mr Peter Kinghorn, Dundee Law Centre. The Applicant was present.
- 5 The Applicant explained that nothing had materially changed and he was still seeking the order for repossession as sought in the application.
- 6 Mr Kinghorn explained that whilst the application had been prompted by rent arrears, he was aware that it relied upon section 33 as the ground for repossession and the provisions of this ground appeared to have been met. He was not therefore opposing the order. He did explain that he was awaiting a decision on backdated housing benefit and this may have an impact on the arrears balance. He asked whether it would be possible for the Case Management Discussion to be adjourned for the outcome of that appeal.
- 7 The Applicant was asked whether he would be prepared to adjourn the Case Management Discussion however he stated that he would prefer to have the protection of the eviction order given the history of rent arrears.

Findings in Fact and Law

- 8 The Applicant and the Respondents entered into a Tenancy Agreement dated 3rd October 2017 in respect of the Property, the term of which was a period of 6 months from and including 3rd October 2017 to 2nd April 2018 and calendar monthly thereafter.
- 9 The tenancy was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.

- 10 On 25th February 2019 the Respondent was served with a Notice to Quit terminating the tenancy as at 2nd May 2019 and Notice intimating that the Landlord required possession of the house as at 3rd May 2019. Both Notices were served by Sheriff Officers.
- 11 The tenancy has reached its ish as at 2nd May 2019. Tacit relocation is not operating. There is no further contractual tenancy in existence.

Reasons for Decision

12 In this case the Applicant seeks an order for repossession of a short assured tenancy under section 33 of the Housing (Scotland) Act 1988

13 Section 33(1) of the Housing (Scotland) Act 1988 provides as follows:-

“(1) 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 finish;*
- (b) That tacit relocation is not operating;*
- (c)and*
- (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.”*

14 The Tribunal was satisfied that a valid Notice to Quit had been properly served on the Respondent which terminated the contractual tenancy between the parties as at 2nd May 2019. Accordingly tacit relocation was not operating. The Respondent had also been given notice that the Applicant required possession of the Property.

15 It was therefore clear from the documentation before the Tribunal that the provisions of section 33 had been met and it was therefore obliged to make the order.

16 For the avoidance of doubt the Tribunal was clear that the making of the order did not prevent parties from continuing discussions regarding the payment of rent and the Respondent’s future occupation of the property.

17 The Tribunal therefore determined to make an order for repossession under section 33 of the Housing (Scotland) Act 1988.

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.

Ruth O'Hare

Legal Member/Chair

Date

9 July 2019