



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/24/5701

Property at The Spires, Foredale Terrace, Bo’Ness, Falkirk, EH51 9LW (“the Property”)

Parties:

The Church of Scotland General Trustees, 121 George Street, Edinburgh, EH2 4YN (“the Applicant”)

Mr James Wood, Ms Lesley-Anne McLelland, The Spires, Foredale Terrace, Bo’Ness, Falkirk, EH51 9LW (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision - in absence of the Respondents

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for possession of the property should be refused.

Background

1. The Applicant seeks an order for possession in terms of Section 33 of the 1988 Act. A tenancy agreement, AT5 Notice, Notice to Quit and Section 11 Notice were lodged with the application.
2. A copy of the application was served on the Respondents by Sheriff Officer. The parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 29 August 2025 at 10am and that they were required to participate.

3. The CMD took place on 29 August 2025. The Applicant was represented by Mr Di Paola. The Respondents did not participate.

The Case Management Discussion

4. Mr Di Paola told the Tribunal that the Respondents are still in occupation of the property and that an order for possession is sought.
5. The Legal Member advised Mr Di Paola that the Tribunal had identified a number of potentially serious issues with the Notices lodged with the application.
 - (a) The Notice to quit appears to be invalid as the date specified in the Notice does not coincide with an ish. In addition, the Notice does not contain the prescribed information required in terms of Section 112 of the Rent (Scotland) Act 1984.
 - (b) The Applicant had not provided a copy of the Section 33 notice which they stated had been issued to the Respondents.
 - (c) The Applicant had also failed to provide any evidence that the Notices had been served in accordance with Section 54 of the 1988 Act or established when they were served.
6. Mr Di Paola confirmed that he was aware of these issues as they had been brought to his attention during the sifting stage of the application. He said that he had nothing further to add to the submission he lodged at that time which indicated that there had been no prejudice to the Respondents and that they had clearly received the notices as they were referred to in an email dated 29 November 2024.

Findings in Fact

7. The Applicant is the owner and landlord of the property.
8. The Respondents are the tenants of the property in terms of a short assured tenancy agreement.
9. In terms of the contract, the initial term of the tenancy was 28 November 2017 to 28 May 2018 with a provision that it would continue on a month to month basis after the initial term, if not terminated.
10. The Applicant issued a Notice to Quit to the Respondents. The date specified in the Notice is 2 December 2024.

11. The Notice to quit does not contain the information specified in the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988.
12. The Respondents sent an email to the Applicant on 29 November 2024 which referred to them having received a “section 22 notice to quit”.

Reasons for Decision

13. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 28 November 2017 to 28 May 2018 with a provision that it would continue on a month to month basis after the initial term.
14. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
15. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of six months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondents prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
16. From the documents submitted with the application, and information provided at the CMD, the Tribunal is satisfied that the Applicant sent a Notice to Quit to the Respondents at some point between 11 September and 29 November 2024. The Notice to Quit called upon the Respondents to vacate the property on 2 December 2024, which is not an ish date. The Notice does not contain the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and therefore does not comply with Section 112 of the Rent (Scotland) Act 1984.
17. The Applicant did not submit a Section 33 notice with the application. The Applicant’s representative stated that a notice was sent but that he had not retained a copy. The Respondents had acknowledged the notices by email on 29 November 2024. In the email they refer to having received a “section 22 notice to quit”. Mr Di Paola stated that, although it referred to section 22 and not section 33, this was clearly a reference to a section 33 notice.

18. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
19. Section 54 of the 1988 Act sets out the three ways in which a Notice may be served in terms of the 1988 Act. These are – by delivering the notice to the person, by leaving it at their last known address and by sending it by recorded delivery post to the person. The letter addressed to the Respondents which accompanied the notice to quit is dated 11 September 2024 and headed “Recorded Delivery” but the Applicant has not provided (and confirmed that they could not provide) evidence that it had been sent by recorded delivery post, such as a post office certificate of posting and Royal Mail track and trace report.
20. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(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 may 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; (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, and (e) that it is reasonable to make an order for possession” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months”.
21. The Notice to Quit which was given to the Respondents is invalid. It is established law that a landlord cannot call upon a tenant to vacate the property before the ish. As the tenancy continued on a month to month basis after the initial term, there is an ish on the 28th of each month. The notice erroneously called upon the tenants to vacate the property on 2 December 2024.
22. There are other defects in the Notice to quit. Section 112 of the Rent (Scotland) Act 1984 states “(1) No notice by a landlord or a tenant to quit any premises let (whether before or after the commencement of this Act) as a dwelling house shall be valid unless it is in writing and contains such information as may be prescribed and is given not less than four weeks before the date on which it is to take effect.” The prescribed information in question is set out in the 1988 Regulations. This information is completely absent from the Notice issued to the Respondents. There is also a question mark over the method of service of the Notice. As the Applicant cannot provide the post office certificate of posting, they have failed to demonstrate to the Tribunal’s satisfaction, that the Notice was served by a method which complies with Section 54 of the 1988 Act. They have also failed to demonstrate that the Applicant gave the Respondents at least 4 weeks notice, as required by Section 112 of the 1984 Act.
23. As the notice to quit is invalid, and the tenancy contract has not been terminated, the Applicant has failed to comply with Sections 33(1) (a) and (b). The Tribunal can only grant an order for possession if the tenancy has reached

its ish and tacit relocation is not operating. The third requirement of Section 33(1) is that “(d) the landlord has given to the tenant notice stating that he requires possession of the house”. Subsection 2 states that at least 2 months notice is required, more if the tenancy contract stipulates a longer period. In this case, the Applicant has not provided a copy of a section 33 notice with evidence showing when and how it was sent. Even if the Tribunal had been satisfied that a notice was issued, the information and evidence provided does not establish that the notice was compliant with Section 33. It therefore follows that the Tribunal is also not able to grant an order for possession as the Applicant has failed to comply with Section 33(1)(d).

24. For the reasons outlined, the Tribunal is satisfied that the Applicant has failed to comply with Section 33 of the 1988 Act and that an order for possession of the property cannot be granted.

Decision

25. The Tribunal determines that the application should be refused.

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.

Josephine Bonnar

29 August 2025

Legal Member

Date