

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/24/1740

Re: Property at Flat 0/3, 209 Kirkton Avenue, Glasgow, G13 3AF ("the Property")

Parties:

Edzell Property Holding Limited, 1008 Pollokshaws Road, Glasgow, G41 2HG ("the Applicant")

Ms Elizabeth Akinmuda, Flat 0/3, 209 Kirkton Avenue, Glasgow, G13 3AF ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Ann Moore (Ordinary Member)

Decision

At the Case Management Discussion ("CMD") which took place by telephone conference on 28 August 2025, the Applicant was not present but was represented by Mr Augustine Casiday of Mitchells Robertson, Solicitors, Glasgow. The Respondent was present and was represented by Mr David Doig of Raeside Chisholm, Solicitors, Glasgow.

The CMD was also in respect of the related case bearing reference FTS/HPC/CV/25/1148.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that –

Background

A CMD previously took place on 21 May 2025. That CMD was adjourned due to the unexplained absence of the Applicant and any representative.

Prior to the CMD on 28 August 2025 the Tribunal received the following additional written submissions from the parties as follows:-

- By email from Mr Casiday dated 21 August 2025 written submissions for the Applicant;
- By email dated 21 August 2025 from Mr Doig's colleague, Mr Nicolas Nimmo, written submissions for the Respondent;
- By email dated 26 August 2025 from Mr Casiday further written submissions for the Applicant.

The CMD

At the outset of the CMD and having regard to their written submissions the Tribunal sought to clarify the parties' respective positions relative to the status of the agreement between them relative to the Property.

For the Respondent –

- i. Mr Doig accepted there to be a tenancy between the parties.
- ii. He said at the outset the Respondent rented only a room in the Property but now occupies the Property as a whole.
- iii. He accepted that the Respondent pays rent to the Applicant.
- iv. The Respondent is living in the Property as at the CMD. She had previously been convalescing abroad.
- v. He said there are no other protected individuals living in the Property.
- vi. He considered the tenancy between the parties to be an assured tenancy as opposed to a short assured tenancy.
- vii. He accepted he had offered no submissions on the reasonableness of granting an eviction order.
- viii. He said the defence is a technical one on the status of the tenancy agreement. It is an "all or nothing" position.

For the Applicant-

- i. In that the Applicant acquired the Property and therefore the landlord's interest in the tenancy from the person with whom the Respondent entered into the tenancy, Ms Landells, Mr Casiday stated that the paperwork lodged with the Tribunal is all that is available.
- ii. He has had no contact with Ms Landells.
- iii. He said that the Form AT5 appeared to have been cut and pasted into Ms Landells email to herself dated 12 July 2014.
- iv. At this point the Tribunal highlighted the text of the Form AT5 to be scrambled within both Members' sets of papers. Mr Casiday stated that his copy of the Form AT5 was not scrambled and the Form AT5 text was not scrambled when lodged. He undertook to send to the Tribunal a further copy of the Form AT5.
- v. Mr Casiday accepted that he could not produce any additional documentation relative to service of the Form AT5 by Ms Landells on the Respondent.
- vi. He said the paperwork produced is as good as it gets.

The Tribunal concluded that, as a preliminary matter, it required to determine the status of the tenancy between the parties – is it an assured or a short assured tenancy? The determination of the status of the tenancy agreement turns on whether or not the Form AT5 was complete and properly served on the Respondent prior to the tenancy being created, the Form AT5 being a prescribed notice that conforms with Sections 32(1) and (2) of the Housing (Scotland) Act 1988.

If the Form AT5 was not complete and/or not properly served, the tenancy is assured not short assured and these proceedings must fail as they proceed upon Section 33 of the Housing (Scotland) Act 1988.

If the Form AT5 was complete and properly served then the tenancy would be a short assured tenancy and it would be open to the Tribunal to grant an eviction order, there being no opposition offered to the reasonableness of an eviction order being granted.

The Tribunal therefore adjourned to receive from Mr Casiday the unscrambled copy of the Form AT5.

Reasons for Decision

Following the CMD the Tribunal received the following from Mr Casiday –

- Emails dated 28 August 2025 including the unscrambled Form AT5; and
- Email dated 5 September 2025.

Sections 32 of the 1988 Act states:-

"32.— Short assured tenancies.

- (1) A short assured tenancy is an assured tenancy—
 - (a) which is for a term of not less than six 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 one which—
 - (a) is in such form as may be prescribed;*
 - (b) is served before the creation of the 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 that tenancy; and*
 - (d) states that the assured tenancy to which it relates is to be a short assured tenancy.**
- (3) Subject to subsection (4) below, if, at the ish of a short assured tenancy—
 - (a) it continues by tacit relocation;*the continued tenancy shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.*
- (4) Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy, the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued tenancy is not to be a short assured tenancy.*
- (5) Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy."*

Section 33 of the 1988 Act states:-

"Recovery of possession on termination of a short assured tenancy.

- (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 ish;*
 - (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."

Whilst the Tribunal was satisfied that the Form AT5 was complete there was no evidence whatsoever of service of the Form AT5 on the Respondent prior to the tenancy being created. The only evidence produced and founded upon by the Applicant was an email from the original landlord and former owner of the Property, Ms Landells, to herself with the Form AT5 contained therein. This is wholly inadequate. Whilst the tenancy terms and conditions, as set out in an email from Ms Landells to the Respondent dated 12 July 2014, make reference to Ms Landells sending a further email to the Respondent "withing the next day" with the Section 32 Notice, no evidence is available to confirm that was done.

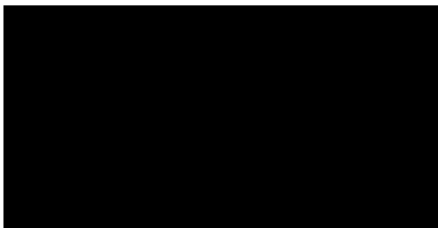
The Tribunal therefore concludes that the tenancy between the parties is an assured tenancy. Accordingly, these proceedings must fail in that they are premised on a remedy under Section 33 of the 1988 Act which is only available where a short assured tenancy exists.

Decision

The Tribunal therefore refuses 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.



Legal Member/Chair

28 August 2025

Date