



**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/19/0182**

**Re: Property at 24B Roseangle, Dundee, DD1 4LR (“the Property”)**

**Parties:**

**Scots Oak Properties LTD, Oakmere, Kinnaird, Perthshire, PH14 9QZ (“the Applicant”)**

**Mrs Ann-Elizabeth Gilmour, 24B Roseangle, Dundee, DD1 4LR (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatrige (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.**

**Background:**

On 28 January 2019 the Tribunal accepted for determination an application made on 16 January 2019 by the Applicant’s representatives for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988. The Applicant lodged with the application the Short Assured Tenancy Agreement commencing on 8 June 2013 as well as a copy of the AT5, the Notice to Quit dated 14 September 2018 and S 33 Notice dated 14 September 2018 and the Proof of service of same by Sheriff Officers, which confirmed service 19 September 2018. The bundle also contained the S 11 Notice to the Local Authority under the Homelessness etc (Scotland) Act 2003.

A Case Management Discussion (CMD) took place on 11 March 2019. This was intimated to the Respondent by Sheriff Officers on 18 February 2019. The CMD was attended by Robyn Kerr of Struan Baptie Property Management LTD on behalf of the Applicant. The Respondent did not attend. The Respondent had not made any

representations to the tribunal prior to the CMD. The intimation to the parties included the information that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application.

The Respondent had been given the 14 days notice required in Rule 24 of the Rules of Procedure.

### **The Case Management Discussion:**

On behalf of the Applicant Ms Kerr explained that the Respondent had not been in contact but that the Respondent continued to reside in the property. She referred to the documents served on the Respondent, which were lodged with the application and asked for the application to be granted.

The Tribunal was satisfied on the basis of the documents lodged that that all requirements for recovery of possession in terms of the Housing Scotland Act 1988 had been complied with. No representations from the Respondent had been received by the Tribunal. It was accepted that a Notice to Quit and a Notice in terms of S 33 (1) (d) of the Housing (Scotland) Act 1988 had been served on the Respondent giving the required 2 months notice in terms of S33 of the Act and the require 40 days notice in the Notice to Quit.

The Tribunal concluded that as there facts in this case were not disputed by any representations from the Respondent, it was not necessary to fix a hearing.

If the tests of S 33 (1) of the Housing (Scotland) Act 1988 are met there is no discretion for the Tribunal and the order must be granted. All issues were discussed at the hearing and the facts of the case were clear.

### **Findings in Fact:**

1. The Applicant and the Respondent entered into a Short Assured Tenancy on 8 June 2013 for a 6 months period with an end date on 9 December 2013 as per clause 3 of the tenancy agreement.
2. In terms of clause 3 of the tenancy agreement, if not terminated at the end date, the tenancy agreement will continue on a month to month basis and may be ended by the either party giving no less than two months notice in writing to terminate the tenancy.
3. Notice to Quit was served on the Respondent by Sheriff Officers on 19 September 2018 advising of the termination of the tenancy on the termination date of 9 December 2018.
4. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent by Sheriff Officers on 19 September 2018 advising that the landlord requires possession of the premises on 9 December 2018.
5. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
6. The Respondent continued to occupy the property at the date of the CMD.

## **Reasons for the Decision:**

The Tribunal considered that the facts of the case were not disputed. No representations were made by the Respondent and the Respondent did not attend the CMD.

### **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.

Power to determine the proceedings without a hearing

### **However, in terms of Rule 18 of the Rules of Procedure:**

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.

There was no opposition to the application. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case. The Respondent had opted not to participate in the process, had not made any written representations and did not attend the CMD.

The Tribunal makes the decision on the basis of the written evidence lodged by the Applicant and on the unopposed motion of the Applicant.

In terms of S 33 (1) of the Housing (Scotland) Act 1988 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.

In this case there was not dispute that the tenancy is a short assured tenancy which had reached its ish. The landlord had served a notice to quit with the required 40 days notice period and thus tacit relocation did not operate. The contractual tenancy had come to an end. The landlord had served on the Respondents a notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 with the required 2 months notice period.

The Tribunal has no discretion in the matter. The conditions for an order for possession in terms of S 33 (1) of the Housing (Scotland) Act 1988 have been evidenced by the Applicant in the documentation lodged and are not disputed. Thus the Tribunal grants the order for 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.**

Mrs Petra Hennig-McFatrige

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**Legal Member/Chair**

**11 March 2019**  
**Date**