

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/19/1638

**Re: Property at 58 Dawson Road, Broughty Ferry, Dundee, DD5 1PY (“the
Property”)**

Parties:

**Mr Khaleefa Mahmood, 4 Listmore Place, Newton Mearns, Glasgow, G77 6UQ
 (“the Applicant”)**

**Ms Debbie Jackson, 58 Dawson Road, Broughty Ferry, Dundee, DD5 1PY (“the
Respondent”)**

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the order should be granted.**

Background:

On 28 May 2019 the Tribunal received an application made on 27 May 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 27 May 2012 as well as a copy of the AT5, the Notice to Quit dated 15 March 2019 and S 33 Notice dated 15 March 2019 and the Proof of service of same by recorded delivery track and trace which confirmed service on 16 March 2019. The bundle also contained the S 11 Notice to the Local Authority under the Homelessness etc (Scotland) Act 2003.

A Case Management Discussion (CMD) on 27 August 2019 was fixed and both parties notified of the date and time. The CMD was attended by Ms Royle from Baillie Shepherd solicitors on behalf of the Applicant and by the Respondent

supported by Claire Miller and Milly Airth from Action for Children. 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 Royle moved the application. The Respondent initially wished to clarify why the application was made and on what grounds the landlord was seeking to evict her. When it was explained by the Legal Member that the application was made solely on the basis of the provisions of recovery of possession for Short Assured Tenancies, which did not require a specific ground of eviction but a process set out in the Housing (Scotland) Act 1988, she confirmed that she had received the AT5 document, the Notice to Quit and S 33 Notice as stated in the application and that there is no reason why she could dispute the application for recovery of possession.

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. The Respondent did not dispute that all the conditions for an order for recovery of possession of the property had been met by the Applicant. 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 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 27 May 2012 for an initial period until 25 May 2013.
2. Document AT5 was signed for by the Respondent on 14 May 2012.
3. In terms of Part I Clause 1 of the tenancy agreement the tenancy continued from year to year unless terminated by a notice to quit by either party.
4. In terms of Part I Clause 1 of the tenancy agreement the notice period is 2 months.
5. Notice to Quit was served on the Respondent by recorded delivery on 16 March 2019 advising of the termination of the tenancy on the termination date of 25 May 2019.

6. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent by recorded delivery on 16 March 2019 advising of the intention to repossess the premises on 25 May 2019.
7. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
8. The Respondent continued to occupy the property at the date of the CMD.

Reasons for the Decision:

The Tribunal make the decision on the basis of the written evidence lodged by the Applicant and on the unopposed motion of the Applicant. There was no dispute about the facts of the case.

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 2 months notice period for the ish on 25 May 2019 and thus tacit relocation does 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.

Petra Hennig-McFatridge
Legal Member/Chair

27 August 2019

Date