



**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/19/1992**

**Re: Property at 27 Gardiner Road, Prestonpans, EH32 9HF (“the Property”)**

**Parties:**

**Ms Debbie McKenzie, 72 Cameron Way, Prestonpans, EH32 9FH (“the Applicant”)**

**Ms Sarah Jayne Dick, 27 Gardiner Road, Prestonpans, EH32 9HF (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

This is an application received by the Tribunal on 28<sup>th</sup> June 2019 and brought in terms of Rule 66 (Application for order for possession upon termination of a short assured tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with her application copies of the short assured tenancy agreement, form AT5, Notice to Quit, Section 33 notice, Section 11 notice, and relevant executions of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 25<sup>th</sup> July 2019, and the Tribunal was provided with the execution of service.

### **Case Management Discussion**

A Case Management Discussion was held on 2<sup>nd</sup> September 2019 at George House, George Street, Edinburgh. The Applicant did not appear, but was represented by Mr Macleod, solicitor. The Respondent did not appear, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was invited by Mr Macleod with reference to the application and papers to grant the order sought.

In response to an enquiry by the Tribunal, Mr Macleod confirmed that the post office track and trace system did not disclose the date of delivery of the notice to quit and section 33 notice. He had contacted the post office, who confirmed there was an error in their systems. The post office confirmed that they had no record of the letter being returned as undelivered or as not called for.

Mr Macleod also confirmed that his office had in addition to the recorded delivery letter sent the Respondent a duplicate by first class delivery post on 28<sup>th</sup> March 2019, which the tenant should have received.

### **Statement of Reasons**

In terms of Section 33 of the *Housing (Scotland) Act 1988*, the Tribunal shall make an order for possession of the house let on the tenancy if:

- (a) the short assured tenancy has reached its end;
- (b) tacit relocation is not operating;
- (c) no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
- (d) the landlord has given to the tenant notice stating that he requires possession of the house.

All of the above criteria have been satisfied in this application, and accordingly the Tribunal shall make an order for possession.

The Tribunal accepted the evidence Mr Macleod provided from the post office, which indicated that the recorded delivery letter, and the first class postal delivery letter, were both delivered, and should have reached the Respondent on 29<sup>th</sup> or at worst 30<sup>th</sup> March 2019.

## Decision

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy as sought in this 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.

N.Kinnear

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Legal Member/Chair

02/09/19  
\_\_\_\_\_  
Date