

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 (“the 1988 Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/18/2396

**Re: Property at 46 Balgowan Avenue, Dundee, DD3 0EZ
 (“the Property”)**

Parties:

**Miss Leanne Carling, c/o Carling Property Group Limited, The Business Centre Church Street, Broughty Ferry, Dundee, DD5 1HB
 (“the Applicant”)**

**Miller Hendry, Solicitors, 13 Ward Road, Dundee, DD1 1LU, for BTO Solicitors LLP, 48 St Vincent Street, Glasgow, G2 5HS
 (“the Applicant’s Representative”)**

**Miss Natasha Kerr and Mr Stephen Bell, 46 Balgowan Avenue, Dundee, DD3 0EZ
 (“the Respondents”)**

**Peter Kinghorn, Dundee North Law Centre, 101 Whitfield Drive, Whitfield, Dundee, DD4 0DX
 (“the Respondents’ Representative”)**

Tribunal Members:

Susanne L M Tanner Q.C. (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) was satisfied (a) that the short assured tenancy between the parties in respect of the Property has reached its end; (b) that tacit relocation is not operating; (c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and (d) the Applicant has given to the tenant more than two months’ notice stating that she required

1.7. On 8 January 2019 the CMD scheduled for 16 January 2019 was postponed to a date to be determined.

1.8. On 22 February 2019, after the required period of notice had expired, the Applicant's Representative amended the Application to add Mr Stephen Bell as the Second Respondent.

1.9. A further CMD was fixed for 12 March 2019 and all parties were notified of the date, time and place of the CMD.

2. Second Case Management Discussion ("CMD") – 12 March 2019 at 1000h at Dundee Carers' Centre, Dundee

2.1. Ms Catherine Glen, Solicitor from Miller Hendry, the Applicant's Representative, attended with a trainee solicitor and the Applicant.

2.2. Peter Kinghorn, the Respondents' Representative attended on behalf of both Respondents. He produced a signed mandate in relation to representation at this CMD and the related CMD in CV/18/2395. He also submitted a letter stating that no defence will be offered with regard to the eviction application.

2.3. The tribunal chair confirmed with parties that the correct postcode of the Property is DD3 0EZ, which is the address at which the sheriff officers effected service on the Respondents. The Applicant's Representative moved to amend the Application, which the tribunal allowed, and the tribunal's administration updated the paperwork.

2.4. The Applicant's Representative sought an order for possession at the CMD in terms of Section 33 of the 1988 Act and Rule 66 of the 2017 Rules.

2.5. The tribunal chair considered the documentation which had been lodged in support of the Application:

2.5.1. a copy of the AT5 notice signed by the Respondents dated 8 February 2016;

2.5.2. a copy of the short assured tenancy agreement between the Applicant and the Respondents dated 8 February 2016;

2.5.3. a copy of the notice from the Applicant to the First Respondent under Section 33(1)(d) of the 1988 Act dated 17 May 2018, notifying the Respondent that the Applicant required possession of the Property as at 8 August 2018; with Royal Mail proof of delivery on 19 May 2018;

- 2.5.4. a copy notice to quit from the Applicant to the First Respondent dated 17 May 2018 notifying the Respondent that she was required to remove from the Property with effect from 8 August 2018; with Royal Mail proof of delivery on 19 May 2018;
- 2.5.5. a copy of the notice from the Applicant to the Second Respondent under Section 33(1)(d) of the 1988 Act dated 26 November 2018, notifying the Respondent that the Applicant required possession of the Property as at 8 February 2019; with Royal Mail proof of delivery on 28 November 2018;
- 2.5.6. a copy notice to quit from the Applicant to the Second Respondent dated 26 November 2018 notifying the Respondent that he was required to remove from the Property with effect from 8 February 2019; with Royal Mail proof of delivery on 28 November 2018;
- 2.5.7. a copy of the Section 11 Notice which was sent to the local authority in respect of the proceedings against the Respondents.
- 2.6. The short assured tenancy agreement was not signed by or on behalf of the Applicant but it was signed by the Respondents on 8 February 2016. The agreement provides that the date of entry to the Property was 8 February 2016 and the original date of termination was 8 August 2016. Paragraph 1.1 provides that if the agreement is not brought to an end by either party on the end date it will continue thereafter on a monthly basis until ended by either party giving no less than two months' notice to the other party.
- 2.7. On the basis of the submissions and evidence on behalf of the Applicant and the submissions on behalf of the Respondents, the tribunal makes the following findings-in-fact:
- 2.7.1. There was a Short Assured Tenancy agreement between the parties in respect of the Property for the initial period from 8 February 2016 to 8 August 2016.
- 2.7.2. Since 9 August 2016 the tenancy has tacitly has relocated on a calendar monthly basis.
- 2.7.3. The minimum period of notice for termination of the lease by the Landlord, is 2 months.
- 2.7.4. The Notice to Quit and Section 33 notice were served by Sheriff Officers on the First Respondent on 6 July 2018.

2.7.5. The Notice to Quit and Section 33 Notice were served by Sheriff Officers on the Second Respondent on 28 November 2018.

2.7.6. The short assured tenancy reached its end on 8 February 2019.

2.7.7. Tacit relocation is not operating.

2.7.8. No further contractual tenancy is for the time being in existence.

2.7.9. The Applicant has given the Respondents notice that she requires possession of the House on 9 February 2019.

3. Findings in Fact and Law

3.1. The requirements of Section 33 of the 1988 Act have been met, namely that (a) that the short assured tenancy between the parties in respect of the Property has reached its end; (b) that tacit relocation is not operating; (c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and (d) the Applicant has given to the tenant more than two months' notice stating that she required possession of the Property.

3.2. The tribunal is therefore required to make an order for possession in terms of Section 33(1) of the 1988 Act.

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.

S. L. M. Tanner

12 March 2019

**Susanne L M Tanner Q.C.
Legal Member/Chair**