



**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/19/2650**

**Re: Property at 3/2 (also known as 3/R), 73 Church Street, Dundee, DD3 7HP  
("the Property")**

**Parties:**

**BRL 1995 Discretionary Trust, c/o Lickley Proctor Lettings, 58 Bell Street,  
Dundee, DD1 1HF ("the Applicant")**

**Bruce Short Solicitors, 3 Rattray Street, Dundee, DD1 1NA ("the Applicant's  
Agent")**

**Mr Ian Thomas Brown, residing at 3/2, 73 Church Street, Dundee, DD3 7HP  
("the Respondent")**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined to make an order for repossession against the  
Respondent**

**Background**

1 By application dated 20<sup>th</sup> August 2019 the Applicant sought an order for repossession against the Respondent under section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The following documents were submitted in support of the application:-

- (i) Copy Tenancy Agreement between the parties dated 26<sup>th</sup> and 29<sup>th</sup> August 2011 together with Form AT5;
- (ii) Copy Notice to Quit dated 13<sup>th</sup> May 2019;



- (iii) Copy Notice under section 33(1)(d) of the 1988 Act dated 13<sup>th</sup> May 2019;
  - (iv) Letter from Lickley Proctor Lettings to the Respondent dated 13<sup>th</sup> May 2019;
  - (v) Sheriff Officers Certificate of Service dated 16<sup>th</sup> May 2019 in relation to Notice to Quit and Notice under section 33(1)(d);
  - (vi) Rent Statement; and
  - (vii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Dundee City Council.
- 2 By Notice of Acceptance of Application dated 17<sup>th</sup> September 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds to reject the application. A Case Management Discussion was therefore assigned for 28<sup>th</sup> October 2019.
- 3 The application paperwork together with notification of the Case Management Discussion was served on the Respondents by Sheriff Officers on 24<sup>th</sup> September 2019.

### **The Case Management Discussion**

- 4 The Case Management Discussion took place on 28<sup>th</sup> October 2019. The Applicant was represented by Elizabeth Hodgson from Bruce Short Solicitors. The Respondent did not attend. The Legal Member was satisfied that the Respondent had received proper notification and therefore determined to continue with the Case Management Discussion in his absence.
- 5 Ms Hodgson advised that the Respondent had been served with the correct notices under section 33 of the Housing (Scotland) Act 1988. There had been no contact from the Respondent. The Applicant therefore sought the order for repossession and was entitled to this under the provisions of section 33 of the Act.

### **Findings in Fact and Law**

- 6 The parties entered into a Tenancy Agreement dated 26<sup>th</sup> and 29<sup>th</sup> August 2011;
- 7 The term of the tenancy was 26<sup>th</sup> August 2011 to 27<sup>th</sup> February 2012 and monthly thereafter;



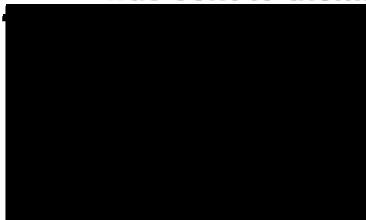
- 8 The tenancy was a Short Assured Tenancy as defined by section 33 of the Housing (Scotland) Act 1988.
- 9 The Respondent has been served with a Notice to Quit terminating the tenancy as at 27<sup>th</sup> July 2019 and Notice under section 33(1)(d) of the Housing (Scotland) Act 1988 informing them that the Applicant required possession of the property as at that same date. Both Notices were served by Sheriff Officers on 16<sup>th</sup> May 2019.
- 10 The Short Assured Tenancy has reached its ish as at 27<sup>th</sup> July 2019. Tacit relocation is not operation. There is no further contractual tenancy in existence between the parties.
- 11 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

### **Reasons for Decision**

- 12 The Tribunal was satisfied that it was able to make a decision at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Tribunal noted that the Respondent had received service of the application paperwork by Sheriff Officers. The Tribunal was therefore satisfied that he had been given the opportunity to participate in the proceedings and it could therefore proceed to determine the application at the Case Management Discussion in his absence.
- 13 The Applicant sought recovery of possession under section 33 of the 1988 Act which provides that the Tribunal must order repossession in the following circumstances:-
  - (i) Where the tenancy has reached its ish;
  - (ii) Tacit relocation is not operating;
  - (iii) No further contractual tenancy is in existence; and
  - (iv) The tenants have been given at least two months notice that the landlord requires repossession of the house.
- 14 The Tribunal accepted based on its findings in fact that the provisions of section 33 had been met. The Notice to Quit had terminated the tenancy as at the 27<sup>th</sup> July 2019 which was a valid ish date under the terms of the tenancy agreement and the Respondent had been given the required notice under section 33(1)(d) of the 1988 Act. The Respondent had not sought to dispute any of the facts stated by the Applicant in the application paperwork and the Tribunal therefore accepted the position put forward by their representative. The Tribunal was therefore obliged to make an order for repossession against the Respondent.

## 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

28/10/19

Date