



**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/19/3082

**Re: Property at Balado Home Farmhouse, Balado, By Kinross, KY13 0NJ (“the
Property”)**

Parties:

**D Geddes Contractors Ltd, Swirlburn, Colliston, Arbroath, Angus, DD11 3SH
 (“the Applicants”)**

**Mrs Kirsty MacGregor, Balado Home Farmhouse, Balado, By Kinross, KY13
0NJ (“the Respondent”)**

Tribunal Members:

Rory Cowan (Legal Member)

Decision (in absence of the Respondent)

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

- **Background**

By application received by the Tribunal on 1 October 2019, the Applicants sought an order for possession relative to the Property in terms of Rule 66. The Tribunal fixed a case management discussion (CMD) for 4 December 2019. The CMD and the date for same was intimated to the parties. Notice of the Application was given by sheriff officers on 31 October 2019. The Respondent was advised that written representations were required by 20 November 2019. No such written representations were received. The Respondent was also advised that she required to attend the CMD and that the Tribunal could make any decision on the Application at the CMD that they could at a hearing including granting it as long as the Tribunal had sufficient information and the procedure had been fair. The CMD took place on 4 December 2019. The Applicants were represented by a Mr Milne of Thorntons Law LLP. The Respondent did not attend, nor was she represented.

- The Case Management Discussion

Prior to the CMD, an email was issued to the Applicants intimating that the Tribunal wished to be addressed on a particular issue that potentially arose from the paperwork submitted. The issue was whether the notice in prescribed form (AT5) had been served on the Respondent before the creation of the tenancy concerned. A short-assured tenancy is a creation of statute rather than contract. That being the case, in order to validly create such a tenancy, the statutory requirements must be met. The paperwork submitted with the Application revealed that although the AT5 was dated 1 February 2016, the Respondent had not signed it until 22 February 2016 and the lease provided was dated 21 February 2016.

Mr Milne explained that the lease had been set up on behalf of the Applicants by another firm of solicitors. He had spoken to them and they confirmed that their practice was to send the AT5 prior to the commencement of and signature of the lease.

He also pointed to clause 27.1 of the lease dated 21 February 2016 which contained a declaration by the Respondent that she had been "...served notice in Form AT5, before the creation of this tenancy...". The lease was signed by the Respondent. In terms of the Housing (Scotland) Act 1988, the requirement of section 32(2) is that the form AT5 be "served before the creation" of the tenancy. In this case the AT5 was dated 1 February 2016 with the lease being dated 21 February 2016. Further the Respondent (regardless of the date she signed the actual AT5) had acknowledged in writing that she had received the form AT5 prior to the signing (or creation) of the lease concerned. As a matter of law, there is no specific requirement that the AT5 be signed by a tenant, the important date is when the AT5 is served upon them.

- Findings in Fact

- 1) That the tenancy dated 21 February 2016 between the Applicants and the Respondent is a short-assured tenancy.
- 2) That 22 September 2019 was an ish or end date for that tenancy.
- 3) That the contractual tenancy was terminated as at 22 September 2019 by the service of a Notice to Quit dated 10 July 2019.
- 4) That Tacit Relocation is not operating.
- 5) That notice in terms of section 33(1)(d) of the housing (Scotland) Act 1988 had been given by the Applicants to the Respondent.
- 6) That the Applicants have therefore complied with the terms of section 33 of the Housing (Scotland) Act 1988.

- Reasons for Decision

The Applicants having complied with the requirements of section 33 of the Housing (Scotland) Act 1988 and the underlying tenancy relative to the Property being a short-assured tenancy are entitled to an order for possession.

- Decision

An order for possession was granted for the Property.

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.

Rory Cowan
Legal Member/Chair

4 December 2019
Date