

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/17/0546**

**Re: Property at 54 Wellington Avenue, Heathhall, Dumfries, DG1 4SB (“the  
Property”)**

**Parties:**

**Ms Kirsty McMillan, 21 Birchfield Place, Georgetown, Dumfries, DG1 3SB (“the  
Applicant”)**

**Ms Kelly Maxwell, 54 Wellington Avenue, Heathhall, Dumfries, DG1 4SD (“the  
Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

**Decision**

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

**Background**

This is an application dated 15<sup>th</sup> December 2017 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 with letter to the local authority intimating the same, 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.

I would note that there is an obvious error in the short assured tenancy agreement, where the commencement date is narrated as 9<sup>th</sup> June 2016 on the first page thereof. However, the duration of the lease is narrated as being for a period of six months terminating on the 10<sup>th</sup> December 2017, the front page of the lease narrates the entry date as 9<sup>th</sup> June 2017, and the lease is signed and dated on 9<sup>th</sup> June 2017, as is the form AT5.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 19<sup>th</sup> February 2018, and I was provided with the executions of service.

### **Case Management Discussion**

A Case Management Discussion was held on 22<sup>nd</sup> March 2018 at Georgetown Community Centre, Lochvale House, Georgetown Road, Dumfries. The Applicant did not appear in person, but was represented by Ms Raymond, solicitor. The Respondent appeared in person together with a supporter, Ms Taylor.

I was invited by Ms Raymond with reference to the application and papers to grant the order sought. The respondent did not contest the granting of the order.

### **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 ish;
- (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.

With regard to the obvious error in the commencement date of the short assured tenancy agreement, I would note that this does not, if taken as written, reduce the term of the lease to less than 6 months, and accordingly in my view does not invalidate the creation of a short assured tenancy in terms of the Housing (Scotland) Act 1988.

Further, I note the decisions of the House of Lords in the cases of *Mannai Investments Co Ltd v Eagle Star Life Assurance Co Ltd* (1997) AC 749 and *Investors Compensation Scheme Limited v West Bromwich Building Society* (1998) 1 WLR 896, the *ratios* of which were applied in Scotland in the case of *Emcor Drake & Scull v Edinburgh Royal Joint Venture* 2005 SLT 1233.

These decisions on interpretation of documents expressly allow for a situation where the wrong words are used, and provide that those errors of expression can be corrected by a proper sensible construction of the document to produce a

reasonable result over one that is not. That being so, the wrong wording in the commencement date in the short assured tenancy agreement can be interpreted by the Tribunal to read as the correct commencement date i.e. 9<sup>th</sup> June 2017.

### **Decision**

In these circumstances, I have 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**

22/03/18  

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**Date**