



**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/19/3166**

**Re: Property at 1/L, 69 Dunbar Street, Aberdeen, AB24 3UA (“the Property”)**

**Parties:**

**Mr Kenneth Patrick Stuart, 86 Anderson Drive, Aberdeen, AB24 4NF (“the  
Applicant”)**

**James and George Collie LLP, 1 East Craibstone Street, Aberdeen, AB11 6YQ  
 (“the Applicant’s Agent”)**

**Ms Phoenix Archer, 1/L, 69 Dunbar Street, Aberdeen, AB24 3UA (“the  
Respondent”)**

**Tribunal Members:**

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

**Decision**

**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 3 October 2019 the Applicant sought an order for repossession against the Respondents 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 1<sup>st</sup> September 2010 together with Form AT5;
  - (ii) Copy Notice to Quit dated 28 June 2019;

- (iii) Copy Notice under section 33(1)(d) of the 1988 Act dated 28 June 2019;
  - (iv) Certificate of Service by Sheriff Officers in respect of the Notice to Quit and section 33(1)(d) Notice dated 28<sup>th</sup> June 2019;
  - (v) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Aberdeen City Council.
- 2 By Notice of Acceptance of Application dated 22 October 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 11<sup>th</sup> December 2019.
- 3 The application paperwork together with notification of the Case Management Discussion was served on the Respondents by Sheriff Officers on 12<sup>th</sup> November 2019.

### **The Case Management Discussion**

- 4 A Case Management Discussion took place on 11<sup>th</sup> December 2019. Shortly prior to the commencement of the Discussion the Tribunal administration was contacted by the Respondent who advised that she would be unable to attend as her train had been cancelled. She asked if the case could be postponed. The Tribunal Clerk contacted the Applicant's Agent who confirmed that they had no objection to the postponement request. The Legal Member therefore agreed to postpone the Case Management Discussion.
- 5 A second Case Management Discussion took place on 27<sup>th</sup> January 2020. The Applicant was represented by Mr Duncan Love from James & George Collie LLP. The Respondent was personally present.
- 6 The Legal Member explained the purpose of the Case Management Discussion. She also explained for Ms Archer's benefit the effect of the provisions of section 33 of the Housing (Scotland) Act 1988, in terms of which the Tribunal may be obliged to grant an order for repossession of the property if certain criteria were met.
- 7 The Legal Member then asked Mr Love if he wished to make any additional submissions other than those noted in the application paperwork. Mr Love explained he didn't really have much to add to the application. It was a short assured tenancy that was preceded by an AT5. It had been terminated by the relevant notices, a Notice to Quit and Section 33. The Notice to Quit coincided with the ish date of the tenancy which had been repeating by tacit relocation on a six monthly basis. The notices had been served by Sheriff Officers which was a valid form of service. Given there had been no written representations from Ms Archer Mr Love was unaware of what her position was as she had not made any written representations.

- 8 The Legal Member asked Ms Archer if she had taken advice regarding the application. She confirmed that she had taken advice from Shelter and she wasn't disputing the application. She confirmed that she was still residing at the property, but was in the process of moving out. She will have vacated by 2<sup>nd</sup> March 2020.

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

- 9 The parties entered into a Tenancy Agreement, the term of the tenancy was a period of six months from 1<sup>st</sup> September 2010;
- 10 In the absence of explicit provision to the contrary the tenancy continued by tacit relocation on a six monthly basis following the initial term.
- 11 The tenancy was a Short Assured Tenancy as defined by section 33 of the Housing (Scotland) Act 1988.
- 12 The Respondent has been served with a Notice to Quit terminating the tenancy as at 1<sup>st</sup> September 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 28<sup>th</sup> June 2019.
- 13 The Short Assured Tenancy has reached its end as at 1<sup>st</sup> September 2019. Tacit relocation is not operating.
- 14 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

### **Statutory provisions**

- 15 The relevant statutory provisions to be applied in this case are the following excerpts from the Housing (Scotland) Act 1988:-

#### **32 Short assured tenancies.**

*(1) A short assured tenancy is an assured tenancy—*

*(a) which is for a term of not less than six months; and*

*(b) in respect of which a notice is served as mentioned in subsection (2) below.*

*(2) The notice referred to in subsection (1)(b) above is one which—*

*(a) is in such form as may be prescribed;*

*(b) is served before the creation of the assured tenancy;*

*(c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and*

*(d) states that the assured tenancy to which it relates is to be a short assured tenancy.*

*(3) Subject to subsection (4) below, if, at the finish of a short assured tenancy—*

*(a) it continues by tacit relocation;*

*the continued tenancy shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.*

*(4) Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued tenancy is not to be a short assured tenancy.*

*(5) Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.*

### **33 Recovery of possession on termination of a short assured tenancy.**

*(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied—*

*(a) that the short assured tenancy has reached its finish;*

*(b) that tacit relocation is not operating; and*

*c) . . . . .*

*(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.*

*(2) The period of notice to be given under subsection (1)(d) above shall be—*

*(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;*

*(ii) in any other case, two months.*

*(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.*

*(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.*

*(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.*

## **Reasons for Decision**

16 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 Respondent was in attendance, the process had been fully explained to her at the Case Management Discussion and it was clear to the Legal Member that none of the substantive matters were in dispute. The Respondent had also confirmed that she had sought advice from Shelter regarding her position in advance of the Case Management Discussion.

- 17 The Applicant sought recovery of possession under section 33 of the Housing (Scotland) Act 1988. Section 33 can only be relied upon for repossession of a short assured tenancy. The Tribunal was satisfied based on the application paperwork that the tenancy was a short assured tenancy as defined by section 32 of the 1988 Act in that it was for a minimum of six months and a Form AT5 had been given to the Respondent prior to the signing of the tenancy agreement confirming that the tenancy she was entering into was a short assured tenancy.
- 18 The Tribunal therefore considered the provisions of section 33. The Respondent had been served with a valid Notice to Quit which terminated the tenancy as at 1<sup>st</sup> September 2019. The Respondent had also been served with at least two months notice stating that the landlord required possession of the house as at that date. Based on the Tribunal's findings in fact, the Tribunal therefore considered that the requirements of section 33 had been met. On that basis it was obliged to make the order for repossession.
- 19 The Tribunal therefore made an order for repossession of the property 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.

R. O'Hare

Legal member/Chair

27/1/20  
Date