



**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/18/1261

**Re: Property at 4 Shamrock Street, Carnoustie, Angus, DD7 7PS (“the
Property”)**

Parties:

**Mr Robert Murray, 50 Carlogie Road, Carnoustie Angus, DD7 6EY (“the
Applicant”)**

**Mr Paul Galloway, Mrs Stacey Galloway, 4 Shamrock Street, Carnoustie,
Angus, DD7 7PS (“the Respondents”)**

Tribunal Members:

Petra Hennig-McFatriidge (Legal Member)

Decision (in absence of the Respondent)

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

Background:

**On 7 June 2018 the Tribunal accepted for determination an application made
on 17 May 2018 by the Applicants through their legal representatives Baillie
Shepherd Solicitors for Possession on Termination of a Short Assured
Tenancy in terms of S 33 of The Housing (Scotland) Act 1988. The Applicants
lodged with the application the Short Assured Tenancy Agreement
commencing on 3 June 2017 as well as a copy of the AT5, the Notice to Quit
dated 22 January 2018 and S 33 Notice dated 23 January 2018 and the Proof of
Recorded Delivery posting with tracking number, which confirmed service by
recorded delivery through the Appellant’s solicitors and signed for by the
Respondent on 24 January 2018. The bundle also contained the S 11 Notice to
the Local Authority under the Homelessness etc (Scotland) Act 2003.**

A handwritten signature in black ink, appearing to be 'P. Hennig-McFatriidge'.

The application and notice of a Case Management Discussion (CMD) fixed for 28 August 2018 was intimated to the Respondent by Sheriff Officers on 27 July 2018. The CMD was attended by Tanya Royle from Baillie Shepherd Solicitors on behalf of the Applicant. The Respondents did not attend.

The intimation to the parties included the information that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application.

The Respondent had been given the 14 days notice required in Rule 24 of the Rules of Procedure.

The Hearing:

On behalf of the Applicant the solicitor explained that the Respondents were waiting to be rehoused by the Local Authority and that there had been no indication to her or the Applicant that they were opposing the application. She further explained that the tenancy had been on a rolling 6 months tenancy pattern and all parties intended to contract for a repeated 6 months tenancy period. She referred me to the case McCabe v Wilson, 2006 Hous.L.R.86 for the calculation of the 6 month period. This had been part of the application bundle.

The Tribunal was satisfied on the basis of the documents lodged that that all requirements for repossession in terms of the Housing Scotland Act 1988 had been complied with. No representations from the Respondents had been received by the Tribunal. It was accepted that a Notice to Quit and a Notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 had been service on the Respondents giving the required 2 months notice in terms of S33 of the Act and the require 40 days notice in the Notice to Quit. Ms Royle the solicitor for the Applicants referred the Tribunal to S 33 (1) of the Housing (Scotland) Act 1988 and moved for an order for repossession of the property.

The Tribunal concluded that as there facts in this case were not disputed by any representations from the Respondent, it was not necessary to adjourn the case to a hearing.

If the tests of S 33 (1) of the Housing (Scotland) Act 1988 are met there is no discretion for the Tribunal and the order must be granted. All issues were discussed at the hearing and the facts of the case were clear.

Findings in Fact:

- 1. The Applicants and the Respondents entered into a Short Assured Tenancy on 3 June 2017 for a 6 months period with a month to month continuation clause.**



2. Notice to Quit was served on the Respondents by Recorded Delivery on 24 January 2018 advising of the termination of the tenancy on the 2 April 2018.
3. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondents by Recorded Delivery on 24 January 2018 advising of the intention to repossess the premises on 2 April 2018
4. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
5. The Respondents had remained in the property at the date of the hearing.

Reasons for the Decision:

The Tribunal make the decision on the basis of the written evidence lodged by the Applicants and on the unopposed motion of the Applicant. There was no dispute about the facts of the case.

In terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its end
2. That tacit relocation is not operating
3. That no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
4. That the landlord has given to the tenant notice that he requires possession of the house.

In this case there was no dispute that the tenancy is a short assured tenancy which had reached its end. The landlord had served a notice to quit with the required 40 days notice period and thus tacit relocation did not operate. The contractual tenancy had come to an end. The landlord had served on the Respondents a notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 with the required 2 months notice period.

The Tribunal has no discretion in the matter. The conditions for an order for possession in terms of S 33 (1) of the Housing (Scotland) Act 1988 have been evidenced by the Applicant in the documentation lodged and are not disputed. Thus the Tribunal grants the order for possession as per the 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.

Petra Hennig-McFatridge

Legal Member/Chair

28.8.18

Date