

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

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**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing Act 1988**

**Chamber Ref: FTS/HPC/EV/18/1667**

**Re: Property at Apartment 1, 172 Market Street, Aberdeen, AB11 5PP ("the Property")**

**Parties:**

**Lemuria Enterprises Ltd, C/O 12 Rubislaw Terrace Lane, Aberdeen, AB10 1XF ("the Applicant")**

**Mr Donald Chukwuebuka Ajaegbu, Apartment 1, 172 Market Street, Aberdeen, AB11 5PP ("the Respondent")**

**Tribunal Members:**

**Petra Hennig-McFatrige (Legal Member)**

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

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

**On 26 June 2018 the application for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988 was made. The Applicants lodged with the application the Short Assured Tenancy Agreement dated commencing on 30 November 2017 as well as a copy of the AT5, the Notice to Quit dated 12 June 2018 and S 33 Notice dated 12 June 2018 and AT6 dated 11 June 2018 and the Sheriff Officers' letters confirming service of these on the Respondent on 14 June 2018. The bundle also contained the S 11 Notice to the Local Authority under the Homelessness etc (Scotland) Act 2003. This was lodged to be heard together with the application under FTS/HPC/CV/1131, which was an application for rent arrears lodged in May 2018 together with a previous action for Possession on Termination of a Short Assured Tenancy under Reference FTS/HPC/EV/1145. The application under reference FTS/HPC/EV/1145 had been rejected by the Tribunal under Rule 8 of the Rules of Procedure on 6 June 2018. Thereafter the new application had been made. The current application was then set to call with the application for a payment order on 25 September 2018.**

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The application was intimated to the Respondent and a Case Management Discussion fixed for 25 September 2018, which was attended by Anne Marie Morrice from DPG Investment Management Ltd, the Applicant's representatives. The Respondent did not attend.

The Respondent, Mr Ajaegbu, had been advised of the date and time and location of the Case Management Discussion by the Tribunal by letter served on him by Sheriff Officers on 7 September 2018. 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. No representations were received from the Respondent and he did not attend the Case Management Discussion.

In terms of Rule 29 the hearing thus took place in his absence.

#### **The Hearing:**

Ms Morrice for the Applicants stated that the tenancy for the property is a Short Assured Tenancy. She referred the Tribunal to the documentation lodged with the application showing that a Notice to Quit and a Notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 had been served on the Respondent by Sheriff Officers on 14 June 2018 giving in fact more than the required 2 months notice in terms of S33 of the Act. The Respondent had not paid any rent for months and ignored previous correspondence. The Respondent had emailed her in August 2018 to say he would move out and return the keys but no keys had been returned.

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

The representative for the Applicants referred the Tribunal to S 33 (1) of the Housing (Scotland) Act 1988 and moved for an order.

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 30 November 2017 with an end date at 31 May 2018 (Clause 2) with a continuation on a monthly basis (Clause 2).

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2. Notice to Quit was served on the Respondents by Sheriff Officers on 14 June 2018 advising of the termination of the tenancy on the ish on 31 August 2018.
3. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondents by Sheriff Officers on 14 June 2018 advising of the intention to repossess the premises on 31 August 2018.
4. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
5. The Respondent had not returned the keys to the property and no contact was received after 31 August 2018.

**Reasons for the Decision:**

The Tribunal make the decision on the basis of the written evidence lodged by the Applicants. 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 ish
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 not dispute that the tenancy is a short assured tenancy which had reached its original ish on 31 May 2018 with a further continuation from month to month. Notice to Quit with the required 40 days notice period was served on 14 June 2018 for the ish on 31 August 2018 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 Applicants in the documentation lodged and are not disputed. Thus the Tribunal grants the order for possession as per the application.

**Decision:**

The Tribunal makes an order for possession of the Property under S 33 (1) of the Housing (Scotland) Act 1988.

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## **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.**

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**Legal Member/Chair**

25.9.18

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**Date**