

**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 Scotland Act 1988**

**Chamber Ref: FTS/HPC/EV/18/1517**

**Re: Property at R/1/1, 273 Hilltown, Dundee, DD3 7AP (“the Property”)**

**Parties:**

**Mr Kamruz Zaman, 2 Bronte Close, Grants Hill, Ilford, IG2 6XS (“the Applicant”)  
(Represented by Mr A. Campbell, Campbell Boath, Solicitors, Dundee)**

**Mr Grant Scott, R/1/1, 273 Hilltown, Dundee, DD3 7AP (“the Respondent”)  
(Represented by Mr A. Hinricks, Shelter, Dundee)**

**Tribunal Member:**

**Gillian Buchanan (Legal Member)**

**Decision**

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

**Background**

- The parties entered into a Short Assured Tenancy on 12 July 2016 for the Tenant to lease from the Landlord the property known as R/1/1 273 Hilltown, Dundee (“the property”);
- The term of the tenancy was originally from 12 July 2016 to 11 January 2017;
- On the expiry of the original term of the tenancy tacit relocation operated to renew the tenancy for a further period of 6 months from 12 January 2017 to 11 July 2017 and thereafter from 12 July 2017 to 11 January 2018 and from 12 January 2018 to 11 July 2018;
- On 5 April 2018, the Landlord’s representative purported to serve on the Tenant, amongst other documents, a Notice under Section 33 of the Housing (Scotland) Act 1988 (“the Section 33 Notice”) in terms of which the Landlord intimated to the Tenant that he required possession of the property and vacant possession as at 11 June 2018;
- The application to the tribunal proceeded on the basis that the tenancy had reached its end and that proper notice had been given under Section 33 of the 1988 Act.

### **The Case Management Discussion**

- At the CMD the Landlord's representative accepted that the tenancy had renewed by tacit relocation after the original term and for the period 12 January 2018 to 11 July 2018;
- The Landlord's representative also accepted that the Section 33 Notice purportedly served was erroneous in that the date required for recovery of possession of the property ought to have been stated to be 11 July 2018;
- The Landlord's representative asked the tribunal to allow the date contained within the Section 33 Notice to be amended to read 11 July 2018;
- The Landlord's representative accepted that the application to the tribunal proceeded on the basis of the Section 33 Notice alone;
- On behalf of the Landlord the Landlord's representative sought an order allowing the Landlord possession of the property.

### **Reasons for Decision**

- There was no dispute regarding the terms of the Short Assured Tenancy.
- There was no dispute that tacit relocation was operating and operated to renew the Tenancy for the period from 12 January 2018 to 11 July 2018.
- There was no dispute that the Section 33 Notice was erroneous in its terms in that the date for the Tenant's removal ought to have been stated to be 11 July 2018.
- Section 33 of the Housing (Scotland) Act 1988 requires that for an order for possession of a house to be granted the tribunal must be satisfied that:-
  - i. The short assured tenancy had reached its ish;
  - ii. That tacit relocation is not operating;
  - iii. And that the Landlord has given proper notice to the tenant stating that he requires possession of the house.

The period of notice to be given to the tenant is 2 months unless the Tenancy Agreement provides a longer period.

- The Section 33 Notice was not valid as an incorrect date was used. The tenancy has not reached its ish. Tacit relocation is operating.
- The Section 33 Notice being fundamentally invalid cannot be amended.
- The application to the tribunal therefore proceeding upon an invalid notice must be dismissed.

### **Decision**

- The Motion made by the Landlord's representative to amend the Section 33 Notice was therefore refused.
- Thereafter the application was dismissed.

### **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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Gillian Buchanan, Legal Member

7 September 2018  
Date