



**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/18/1814**

**Re: Property at 179 Inveraray Avenue, Glenrothes, Fife, KY7 4QS (“the  
Property”)**

**Parties:**

**Ms Gillian Stewart, 5 Queen Street, Cupar, Fife, KY15 7HP (“the Applicant”)**

**Miss Erin Innes, 179 Inveraray Avenue, Glenrothes, Fife, KY7 4QS (“the  
Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member)**

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

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

**Background**

This is an Application for recovery of possession and eviction in respect of the Property in terms of section 33 of the Act. The Application has been raised under Rule 66 of the Procedure Rules.

The Tribunal considered the following documents which were lodged with the Application:

1. Application dated 18 July 2018;
2. Short Assured Tenancy Agreement for the period 14 December 2011 to 15 June 2012 (Page 9 of the lease is missing);
3. Section 33(1)(d) Notice dated 2 May 2018 requiring possession on 15 July 2018;
4. Notice to Quit dated 26 April 2018 notifying the Respondent that she required to remove from the Property by 15 July 2018; and

Alan Strain

## 5. Section 11 Notice.

The case had called for a Case Management Discussion (**CMD**) on 14 September at which the Applicant had been advised that she needed to produce the final page of the tenancy and also address the issue that the Notice to Quit and Section 33 Notice did not terminate the tenancy at its ish nor did they prevent tacit relocation operating. There was no provision in the tenancy to prevent tacit relocation or to cover what transpired when the initial period ended.

### **CMD**

The case called for a further CMD on 8 October at which the Applicant was present along with her solicitor. A template tenancy agreement was produced showing that the missing page 9 was simply the signing particulars. It did not contain any provision which would regulate the termination of the lease.

A letter was produced from the author of the tenancy agreement stating that only 2 month's notice was required. This was the author's opinion.

The Respondent did not appear nor was she represented.

The Tribunal enquired what the Applicant's position was with regard to section 33. The Applicant and her solicitor were of the view that the tenancy had been terminated appropriately.

The Tribunal considered the submissions made on the Applicant's behalf, the documents lodged, the overriding objective and interests of justice.

The tenancy had not been terminated at its ish. The Notice to Quit and Section 33 Notice all referred to dates after the tenancy had renewed under the doctrine of tacit relocation. The terms of the tenancy agreement did not exclude the operation of tacit relocation nor did they qualify the period the tenancy renewed for.

The tenancy not having been validly terminated continued to subsist and accordingly the Tribunal could not grant the order sought.

The Tribunal dismissed 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.**

Alan Strain

\_\_\_\_\_  
**Legal Member/Chair**

8 October 2018  
**Date**