

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/18/2474

Re: Property at Flat B, 33 Barnes Avenue, Dundee, DD4 9AG (“the Property”)

Parties:

**Mrs Susan McKinlay, Northfield, Gamekeepers Road, Kinnesswood, Kinross,
KY13 9JR (“the Applicant”)**

**Ms Sarah McFie, Flat B, 33 Barnes Avenue, Dundee, DD4 9AG (“the
Respondent”)**

Tribunal Members:

Petra Hennig McFatridge (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the order has to be granted.**

Background:

On 11 September 2018 the Applicant applied to the Tribunal 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 dated and commencing 29 September 2016 with original ish date 30 May 2017 as well as a copy of the AT5 signed 29 September 2018 prior to the signature on the tenancy agreement, the Notice to Quit and S 33 Notice both dated 26 June 2018 and the Sheriff Officers letters confirming service of these on the Respondent on 27 June 2018. The bundle also contained the S 11 Notice to the Local Authority under the Homelessness etc (Scotland) Act 2003 and an AT6 notice.

The application was intimated to the Respondent and a Case Management Discussion fixed for 30 November 2018. The Respondent was served by Sheriff Officers with the notification on 12 November 2018 and both parties were advised 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.

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The Case Management Discussion:

The Applicant attended with her husband Mr Scott McKinley as supporter. The Respondent attended with Mr Connor Durban as supporter. The Applicant and the Respondent agreed that the required notices had been served. The Respondent explained that she had been advised by the Council to move out only after the tribunal had granted the order as she is now on the housing waiting list.

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 Applicant 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 Case Management Discussion and the facts of the case were clear.

Findings in Fact:

1. The Applicant and the Respondent entered into a Short Assured Tenancy on 29 September 2016 with an end date at 30 March 2017 with a continuation on a monthly basis (Clause 1.1 of the Short Assured Tenancy Agreement). Form AT5 was served on the Respondent prior to the Tenancy Agreement being signed.
2. Notice to Quit was served on the Respondent by Sheriff Officers on 27 June 2018 advising of the termination of the tenancy on the ish on 30 August 2018.
3. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent by Sheriff Officers on 27 June 2018 advising of the intention to repossess the premises on 30 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 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. 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 30 March 2017 and continued thereafter month to month. The landlord had served a notice to quit with 2 months notice on 27 June 2018 for the ish on 30 August 2018 and thus tacit relocation did not operate. The contractual tenancy had come to an end. The landlord had served on the Respondent a notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 with the required 2 months notice period on 27 June 2018 for the date of 30 August 2018.

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.

Decision:

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

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-McFatriidge

Legal Member/Chair

30.11.18

Date