

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/18/2648

**Re: Property at 25C St Mungo Terrace, St Mary's, Dundee, DD3 9NE ("the
Property")**

Parties:

**Reese Investments LTD, 309 Strathmartine Road, Dundee, DD3 8NS ("the
Applicant")**

**Ms Stacey Davie, 25C St Mungo Terrace, St Mary's, Dundee, DD3 9NE ("the
Respondent")**

Tribunal Member:

Petra Hennig- McFatridge (Legal Member)

Decision (in absence of the Respondent)

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

Background:

The application for recovery of possession on termination of a Short Assured Tenancy was made on 5 October 2018. The application included as documents copy land certificate showing as owners of the property Lee Ford Brown and Janette Elizabeth Brown, copy Short Assured Tenancy Agreement dated 15.8.2016, Copy AT5 dated 15.8.2016, copy confirmation of assignation of lease from Lee Ford Brown and Janette Elizabeth Brown to Reese Investment Limited (Company Number SC451669) dated 3 October 2018, copy S 33 Notice and notice to quit both dated 28 May 2018 and proof of recorded delivery on 30 May 2018 as well as copy S 11 Notice. The application also asked for reduction of the charge in terms of the Bankruptcy and Diligence etc. (Scotland) Act 2007 to 48 hours.

A Case Management Discussion was scheduled for 28 November 2018 at 11.30 am. The Respondent was served with the notification of the date and time and venue of

the Case Management Discussion as well as with the application and accompanying documents by Sheriff Officers on 9 November 2018.

The Respondent was 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.

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 her absence.

The Hearing:

Mr MacRae, legal Representative for the Applicants stated that the tenancy for the property is a Short Assured Tenancy. He 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 service on the Respondent by recorded delivery on 30 May 2018 giving the required 2 months notice in terms of S33 of the Act. He moved for an order for repossession of the property. He confirmed that the Respondent is still staying in the property but that there has been no contact from the Respondent or any payment of rent for months.

With regard to the request for reduction of the charge in terms of the Bankruptcy and Diligence etc. (Scotland) Act 2007 to 48 hours Mr MacRae referred to S 216 (4) of said act. S 216 (4) states: " Where the decree for removing from heritable property is granted by a court, the court may, on cause shown, dispense with or vary the period of charge.." However, he was unable to point to any amendment to the said act which would amend the text from reference to "court" to "First Tier Tribunal".

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 further hearing. The agent 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. Mr and Mrs Brown and the Respondents entered into a Short Assured Tenancy on 15 August 2016 with an initial duration of 1 year. As no further specification was made the tenancy then continued by tacit relocation annually to 15 August 2018.**
- 2. The tenancy has been assigned to the Applicant.**

3. **Notice to Quit was served on the Respondent by recorded delivery on 30 May 2018 advising of the termination of the tenancy on the ish on 15 August 2018.**
4. **Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondents by recorded delivery on 30 May 2018 advising of the intention to repossess the premises on 15 August 2018.**
5. **Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.**
6. **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 ish on 15 August 2018. The landlord had served a notice to quit with the required 40 days notice period on 30 May 2018 for the ish on 15 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 on 30 May 2018 for the date of 15 August 2018. However, in absence of any amendment to S 216 (4) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 in Schedule 1 of the Housing (Scotland) Act 2014 the Tribunal did not consider that S 216 (4) conveyed the power of shortening the charge to the Tribunal.

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.

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-McFatrige

Legal Member/Chair

28.11.18

Date