



**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/18/3323**

**Re: Property at Incharvie Cottage, Colinsburgh, By Leven, KY9 1LU (“the  
Property”)**

**Parties:**

**RT HON Jamie Lindsay, Lahill, Upper Largo, Fife, FK8 6JE (“the Applicant”)**

**Ms Laura aka Lori Coca, Incharvie Cottage, Colinsburgh, By Leven, KY9 1LU  
 (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Ann Moore (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the application should be granted and made an  
Order for Possession of the Property.**

**Background**

By application, received by the Tribunal on 11 December 2018, the Applicant sought an Order for Possession under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”).

The application was accompanied by copies of a Short Assured Tenancy Agreement between the Parties and of a Form AT5 Notice. The Form AT5 Notice was dated 31 May 2017. The application was also accompanied by copies of a Notice given to the Respondent under Section 33 of the 1988 Act and a Notice to Quit, both dated 20 September 2018 and both requiring the Respondent to vacate the Property by 1 December 2018, along with Proof of Delivery on 21 September 2018. The copy Tenancy Agreement was not a signed version. It commenced on 1 June 2017. The Applicant also provided a copy of a continuing Short Assured Tenancy Agreement commencing on 1 June 2018. It had been signed by the Applicant and was for a further period of six months, ending on 1 December 2108.

A Case Management Discussion was held on 29 January 2019. The Applicant's representative told the Tribunal that she did not have a fully signed copy of the Short Assured Tenancy Agreement which commenced on 1 June 2018 and there was discussion as to whether a new tenancy agreement had come into force as at that date. The case was continued to a further Case Management Discussion which took place on 11 March 2019. The Tribunal had to determine whether in the absence of a signed or verbal acceptance of the offer to enter into a new contractual continuing Short Assured Tenancy, the actions of the Respondent in remaining in the Property, continuing to pay rent and not disputing the termination date amounted to acceptance of the offer. The Applicant's representative told the Tribunal that there was an alternative argument, namely that the original Short Assured Tenancy was continuing on a month-to-month basis. The Tribunal decided to fix a Hearing at which evidence could be led.

### **The Hearing**

A Hearing took place at Anstruther Town Hall on the morning of 2 May 2019. The Applicant was represented by Ms Francesca Allanson of Anderson Strathern, Solicitors, Edinburgh. The Respondent was not present or represented.

The Applicant's representative told the Tribunal that the Respondent had vacated the Property and had moved to Aberdeen, but the keys had not been returned to the Applicant, despite the Respondent having advised the Tribunal that her partner would be returning the keys to the Applicant on 1 May 2019. Consequently, the Applicant's representative was still seeking an Order for Possession of the Property.

### **Reasons for Decision**

The Tribunal did not find it necessary to determine whether the original Short Assured Tenancy was still in force or whether it had been replaced by the continuing Short Assured Tenancy Agreement as at 1 June 2018. The Tribunal was satisfied that there was a Short Assured Tenancy Agreement between the Parties and that, whilst it had not seen a signed version, the Respondent had acted on the faith of the Agreement by taking and remaining in occupation of the Property and paying the contractual rent. The Tribunal also noted that, prior to the first Case Management Discussion, the Respondent had stated in an e-mail to the Tribunal that she was not seeking to defend the application.

Section 33 of the 1988 Act provides that Tribunal shall make an Order for possession of a property held on a Short assured Tenancy if it is satisfied that the tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in force and that the Notice required by Section 33 of the 1988 Act has been given. The Tribunal was satisfied that the tenancy had reached its end, that the service of a Notice to Quit prevented tacit relocation operating, that there was no further contractual tenancy in existence between the Parties and that the Section 33 Notice had been given. Accordingly, the Tribunal was bound to grant the Order for Possession.

### **Decision**

The Tribunal determined that the application should be granted and made an Order for Possession of the Property.

## 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

2 May 2019  
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Date