

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**

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**Statement of 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/17/0549**

**Re: Property at 12 McKinnon Drive, Dalkeith, Midlothian, EH22 5RD ("the Property")**

**Parties:**

**Ms Jean Rankin, c/o 31A North Bridge Street, Bathgate, West Lothian, EH22 5RD ("the Applicant")**

**Mr Simbarashe Clive Chasokela, Ms Elner Zarayika, 12 McKinnon Drive, Dalkeith, Midlothian, EH22 5RD ("the Respondent")**

**Tribunal Members:**

**Lesley Johnston (Legal Member)**

**Decision**

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

- **Background**

This is an application by the Landlord, Jean Rankin for an order for recovery of possession of the property at 12 McKinnon Drive, Mayfield, Dalkeith, Midlothian, EH22 5RD from the tenants, Mr Simbarashe Clive Chasokela and Elner Zarayika. The property is let to the Tenants by the Landlord as a Short Assured Tenancy.

The application was lodged with the Tribunal on 20 December 2017.

The application and notice of the hearing was served on the Tenants by Sheriff Officers on 12 January 2018.

Written representations were lodged with the Tribunal by the Tenants on 24 January 2018.

A copy of the Short Assured Tenancy and AT5 were produced with the application.

In terms of clause 1.8 of the Lease, the term of the lease was as follows:

*"The Lease will run from 01/11/2014 (hereinafter referred to as the commencement date") up to and including 30/04/2015 (hereinafter referred to as "the termination date"), collectively this period being referred to as the "initial Term" and thereafter. Following the completion of the Initial Term, the Lease will continue from calendar month to calendar month until brought to an end by either party serving written notice upon the other party of a period of not less than 28 days."*

- The Hearing

Mr Cowan, solicitor for the Applicant appeared for the Applicant. Mr Chasokela and Ms Zaranyika were personally present.

Mr Cowan made submissions in support of the application. He submitted that the terms of Rule 66 of the First-Tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 ('the Regulations') had been satisfied.

Mr Cowan submitted that the application having been made in terms of section 33 of the Housing (Scotland) Act 1988 ('the 1988 Act'), and the terms of that section having been complied with by the Applicant, the Landlord was entitled to possession of the property and the Tribunal had no discretion – it had to grant the order for possession in such circumstances.

I asked Mr Cowan for the second page of the Notice to Quit dated 14 August 2017, which was not contained within the Tribunal's papers. He provided a copy, which was simply the signature sign-off to the letter.

I asked Mr Cowan for a copy of the signed Notices. He advised that he did not have the signed copies, since the principal signed copies had been served on the Tenants.

In response, the Tenants submitted that they are still in the process of acquiring accommodation and had nowhere else to go.

I asked the Tenants if they had received a copy of the Notices to Quit dated 14 August 2017 and they confirmed they had. There was no dispute as to the Notices having been served. The Tenants submission in defence of the application was to request more time to find alternative accommodation.

I also took into account the written submissions lodged by Tenants in advance of the hearing. In that letter, they outlined their efforts made to find alternative accommodation following the Notices having been served by the Landlord. The written submission amounted to a request by the Tenants for more time to seek alternative accommodation.

- Reasons for Decision

I am satisfied that the Notice to Quit and Notice in terms of the 1988 Act, section 33 of the 1988 Act were served on the Tenants and that the terms of the Notices were satisfactory. I am satisfied that the short assured tenancy has reached its end; that tacit relocation is not operating; and that the Landlord has given notice to the Tenant stating that he requires possession of the property – not less than two months' notice having been provided to the Tenants.

The requirements of Rule 66 of the Regulations and section 33 of the Act having been complied with, I have no discretion in this matter and must therefore make an order for possession of the property.

- Decision

**I allow the application and grant an Order for possession of the property in terms of the Housing (Scotland) Act 1988, section 33(1)**

### **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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

L Johnston

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**Legal Member/Chair**

14 / 02 / 2018  

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**Date**