



**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 (“the 1988 Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/EV/18/2128**

**Re: Property at 3 Hilton of Fern, Brechin, Angus, DD9 6SB (“the Property”)**

**Parties:**

**Mrs Mary Mears (otherwise Macpherson), The Kirklands, Logie Pert, Montrose, DD10 9JX (“the Applicant”)**

**Thorntons Law LLP, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ (“the Applicant’s Representative”)**

**Mr Chris Grant and Ms Kelly Brand, 3 Hilton of Fern, Brechin, Angus, DD9 6SB (“the Respondents”)**

**Tribunal Members:**

**Susanne L M Tanner Q.C. (Legal Member)**

**Decision (in absence of Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) (i) was satisfied in terms of Section 33 of the 1988 Act that the short assured tenancy for the Property has reached its end; tacit relocation is not operating; no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and the Applicant has given to the Respondents two months’ notice stating that she requires possession of the house; and (ii) made an order for possession in terms of Section 33 of the 1988 Act.**

## **Statement of Reasons**

1. The Applicant made an application to the tribunal on 15 August 2018 in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicant sought the Respondent's eviction from the Property under Section 33 of the 1988 Act (possession on termination of a short assured tenancy).
3. The Applicant lodged:
  - 3.1. a copy of the short assured tenancy agreement between the Applicant and the Respondents (signed but undated);
  - 3.2. a copy of the AT5 notice signed and dated 1 March 2014;
  - 3.3. a copy of the notices to the Respondents under Section 33(1)(d) of the 1988 Act dated 16 March 2018, notifying the Respondents that the Applicant required possession of the Property as at 1 June 2018; and notices to quit notifying the Respondents that they were required to remove from the Property with effect from 1 June 2018;
  - 3.4. a copy of the AT6 notices in terms of Section 19 of the 1988 Act, dated 16 March 2018, informing the Respondents that the earliest date proceedings would be raised was 2 June 2018;
  - 3.5. certificate of posting and Royal Mail proof of delivery of said notices on the Respondents on 17 March 2018;
  - 3.6. a copy of the Section 11 Notice which was sent to the local authority.
4. The short assured tenancy agreement was signed by all parties but is undated. The agreement provides that the date of entry to the Property was 1 March 2014 and the original date of termination was 1 October 2014. Paragraph 3 provides that if the agreement is not brought to an end by either party on the end date it will continue thereafter on a monthly basis until ended by either party. Paragraph 18 provides that ways in which the short assured tenancy can be ended, which include (para 18.1) the tenancy reaching its end date and the Landlord giving two months' prior written notice that possession of the house is required in terms of section 33 of the Housing (Scotland) Act 1988 at that end date.

5. On 26 September 2018 the Application was referred to a tribunal and a case management discussion ("CMD") was fixed for 14 November 2018 at 1130 in Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee, DD1 2HB.
6. On 23 October 2018 parties were notified by letter of the CMD and told that they were required to attend. Parties were also advised in the same letter that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the Application, which may involve making or refusing an eviction order. If parties do not attend the CMD this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Respondent was afforded the opportunity to return written representations to the tribunal's offices by 12 November 2018.
7. The Application paperwork was personally served on the Respondent Chris Grant by Sheriff Officers and the application paperwork in respect of the Respondent Ms Kelly Brand was deposited through the letterbox.
8. The Respondents did not submit any written representations.
9. A CMD took place on Wednesday 14 November 2018 at 1130h at Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee, DD1 2HB. Mrs Sarah Cooper, Solicitor from the Applicant's Representative attended on behalf of the Applicant. The Respondents did not appear and the hearing took place in their absence.
10. Mrs Cooper made submissions in terms of the date of the short assured tenancy agreement. She submitted that it could be inferred that the short assured tenancy started on 1 March 2014, which is the start date specified of Clause 3 in the tenancy agreement. Clause 19.1 states that in signing the agreement the Respondents acknowledged that they were served an AT5 before the creation of this tenancy. The AT5, signed and dated 1 March 2014, was lodged with the Application paperwork. On the basis of the foregoing Mrs Cooper submitted that it could be inferred that the tenancy was created after the signing of the AT5 on 1 March 2014 and on the start date of the tenancy, which was 1 March 2014.
11. Mrs Cooper indicated that the Respondent's maiden name was Mary Macpherson. The disposition in favour of the Respondent in her maiden name in respect of the Property was signed on 4 November 2008 and registered in the General Register of Sasines for the County of Angus on 24 February 2009.
12. It was submitted on behalf of the Applicant that the tenancy had reached its end on 1 June 2018 as it had continued by tacit relocation on a month to month basis from 1 October 2014, until terminated with the service of a valid notice to quit and

Section 33 notice on 16 March 2018 notifying the Respondents that the Applicant required vacant possession of the Property as at 1 June 2018 and that the Respondents were required to remove from the property on or before 1 June 2018. Said notices were served at least two months before possession of the house was required. The Application to the tribunal was made within the period of 6 months from the date of service of the notices.

13. The tribunal makes the following findings-in-fact:

- 13.1. There was a short assured tenancy between the parties for the initial period 1 March 2014 to 1 October 2014;
- 13.2. Thereafter the tenancy continued by tacit relocation on a monthly basis;
- 13.3. The short assured tenancy reached its end on 1 June 2018 by service on behalf of the Applicant on the Respondents of a notice to quit and Section 33 notice dated 16 March 2018 on 17 March 2018;
- 13.4. tacit relocation is no longer operating;
- 13.5. No further contractual tenancy is for the time being in existence;
- 13.6. The Applicant has given to the Respondents at least two months' notice stating that she requires possession of the Property.

14. The tribunal is satisfied that the requirements of Section 33 of the 1988 Act are met and therefore must make 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.

# **S Tanner**

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**Susanne L M Tanner Q.C.**  
**Legal Member/Chair**

**14 November 2018**