



**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/18/2701

**Re: Property at 5 NEIDPATH ROAD WEST, GIFFNOCK, GLASGOW, G46 6SS
("the Property")**

Parties:

**Mr Paul Molinari, c/o DJ Alexander Lettings Ltd, 1 Wemyss Place, Edinburgh,
EH3 6DH ("the Applicant")**

**Mr Azeem Ali, 5 NEIDPATH ROAD WEST, GIFFNOCK, GLASGOW, G46 6SS
("the Respondent")**

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application dated 10th October 2018 brought in terms of Rule 66 (Application for order for possession upon termination of a short assured tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with his application copies of the short assured tenancy agreement, form AT5, notice to quit, section 33 notice, section 11 notice, letter of authority for representative to act, and relevant executions of service.

The short assured tenancy agreement, form AT5, and section 11 notice had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland)*

Act 1988, and the procedures set out in that Act had been correctly followed and applied.

Unfortunately, the notice to quit and section 33 notice are defective, as they both specify a date to vacate the property which is not an *ish* of the lease. The date specified in the notice to quit and section 33 notice is 10th November 2018.

The lease makes provisions in relation to “Commencement and Duration” at paragraph 2 thereof in the following terms:

“The tenancy will commence on 10 December 2015 (“the entry date”) and will end on 10 June 2016 (“the termination date”).”.

The lease makes no contractual provision in respect of tacit relocation. In that situation, a legal presumption applies that unless one of the parties indicates that they want the relationship to end, then the parties intend it to continue for a further period under exactly the same terms and for the same duration as the original lease (unless the original duration was for more than one year, in which case the lease will continue for further periods of one year until the lease is brought to an end by one of the parties).

It is clear from the terms of paragraph 2 of the lease, therefore, that the *ish* date falls on the 10th June and 10th December of each year, so it must follow that 10th November 2018 is not an *ish* of the lease.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 4th January 2019, and I was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held on 22nd January 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Mr Gibb, letting agent. The Respondent did not appear, nor was he represented.

The Tribunal drew Mr Gibb’s attention to the date in the notice to quit and section 33 notice not being an *ish* of the lease, and explained that it would have to dismiss this application for that reason.

Statement of Reasons

In terms of Section 33 of the *Housing (Scotland) Act 1988*, the Tribunal shall make an order for possession of the house let on the tenancy if:

- (a) the short assured tenancy has reached its *ish*;
- (b) tacit relocation is not operating;
- (c) no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and

(d) the landlord has given to the tenant notice stating that he requires possession of the house.

In order to terminate the lease, the landlord must serve a valid notice to quit in the correct form and which specifies an *ish* of the lease.

In this case, the notice to quit is in the correct form, but specifies a date which is not an *ish* of the lease. As a result, the notice is invalid and ineffectual. Similarly, the section 33 notice is also invalid and ineffectual as the tenancy has not reached its *ish* in consequence of the absence of a valid notice to quit.

As a result, the Tribunal must dismiss this application, as it has no discretion to excuse or remedy the invalidity of the notice to quit and section 33 notice.

Decision

In these circumstances, the Tribunal dismissed the application.

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.

N Kinnear

Legal Member/Chair

22/01/19

Date