



**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/20/0701**

**Re: Property at Flat G/Left, 14 Netherhill Crescent, Paisley, PA4 4RY (“the Property”)**

**Parties:**

**Mr Martin Deeney and Mrs Anne Denney, 25 Nether Auldhouse Road, Glasgow, G43 2XG (“the Applicant”)**

**Miss Caitlin Mitchell and Mr John Brown, G/Left, 14 Netherhill Crescent, Paisley, PA4 4RY (“the Respondent”)**

**Tribunal Members:**

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

**Decision**

**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 Applicants have given to the Respondents two months’ notice stating that they require 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 Applicants made an application to the tribunal on 26 February 2020 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 Applicants seek the Respondents’ eviction from the Property under Section 33 of the 1988 Act (possession on termination of a short assured tenancy).
3. The Applicants lodged:
  - 3.1. Copy of a short assured tenancy agreement dated 10 December 2018;
  - 3.2. Copy of an AT5 notice dated 28 November 2017;
  - 3.3. Copy of notice to the Respondents under Section 33(1)(d) of the 1988 Act, notifying the Respondents that the Applicants required possession of the Property on 25 February 2020, dated 19 December 2019;
  - 3.4. Copy Notice to Quit dated 19 December 2019; and
  - 3.5. a copy of the Section 11 Notice which was sent to the local authority.
4. On 2 March 2020, the tribunal’s administration obtained the title sheet to the Property, which shows that the Applicants have been the registered proprietors of the Property since 26 July 2007.
5. On 18 March 2020, the Application was considered by a legal member of the tribunal acting under the delegated powers of the president of the tribunal. The Applicant’s representative was asked to provide further information, namely proof of service of the Notice to Quit and Section 33 Notice; and confirmation as to why the AT5 is dated a year before the tenancy commenced.
6. On 18 March 2020, the Second Applicant stated that the tenancy started a year before and that she was told to put the current lease date that was in place. She attached a photograph of a receipt of proof of posting on 18 December 2019.
7. The tribunal’s administration checked the tracking information for the reference number and it shows that it was signed for by “C Mitchell” on 21 December 2019 at 11.30am.
8. On 7 May 2020, the Application was considered by a legal member of the tribunal acting under the delegated powers of the president of the tribunal. The Applicants

were asked to provide further information, namely confirmation that the AT5 notice relates to the current tenancy, that the notices were served on both tenants and that the section 11 notice was sent to Renfrewshire Council.

9. On 13 May 2020, the Second Applicant stated that the AT5 relates to the current tenancy; that the notices were served to both tenants; and the section 11 notice was sent to the prevention team at Renfrewshire Council on 24 February 2020. The Second Applicant attached proof of service by email on Renfrewshire Council.
10. On 9 July 2019, the Application was accepted for determination and a Case Management Discussion (“CMD”) teleconference was thereafter fixed for 21 August 2020 at 1000h.
11. On 31 July 2020, parties were notified by letter of the date, time and details of the CMD teleconference 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 14 August 2020.
12. The Application paperwork and notification of the date, time and place of the CMD was personally served on the Respondents on 31 July 2020.
13. The Respondents did not submit any written representations or make any contact with the tribunal’s administration.

**14. Case Management Discussion (“CMD”): 20 August 2020 at 1000 by teleconference**

- 14.1. Both Applicants attended and Mrs Deeney spoke on behalf of both of them.
- 14.2. The first Respondent, Miss Mitchell, attended and stated that she was also representing Mr Brown.
- 14.3. Miss Mitchell stated that they agree with the eviction and have no opposition to the Application. She stated that they are still living in the Property.
- 14.4. Mrs Deeney asked the tribunal to grant the order for eviction. She stated that it is a Short Assured Tenancy which began on 26 November 2018. She

stated that there was originally a tenancy with Caitlin Mitchell on her own from May 2015 onwards and that Miss Mitchell's partner, Mr Brown, moved into the Property with her in November 2017. The AT5 form was served on both Respondents before the November 2017 short assured tenancy agreement was entered into. The most recent joint tenancy agreement is the one lodged with the Application which commenced on 25 November 2018 until 25 May 2019 and that it had continued on a monthly basis after that date as the Applicants had been advised that she did not need to keep issuing 6 monthly tenancies and that the tenancy would continue on a monthly basis. She stated that the the Notice to Quit and s33 notice were served on 21 December 2019. She stated that she had now made a civil application to the tribunal seeking rent arrears but that that had been lodged later than the present application and was being dealt with separately.

14.5. Miss Mitchell stated that she understood the submissions which had been made and the basis upon which eviction was being sought and did not oppose the application.

#### **15. The tribunal makes the following findings-in-fact:**

15.1. There was a short assured tenancy between the Applicants and the Respondents for the initial period 25 November 2018 to 25 May 2019.

15.2. Thereafter the tenancy continued by tacit relocation on a monthly basis and relocated until 25 February 2020.

15.3. The short assured tenancy reached its end on 25 February 2020 by service on behalf of the Applicant on the Respondents, on 21 December 2019, of a Notice to Quit, notifying the Respondents that the tenancy would reach its termination date as at 25 February 2020.

15.4. Tacit relocation is no longer operating;

15.5. No further contractual tenancy is for the time being in existence.

15.6. A Section 33 notice was served by the Applicants on the Respondents on 21 December 2019, notifying the Respondents that the Applicants required vacant possession as at 25 February 2020.

15.7. The Applicants have given to the Respondents at least two months' notice stating that they require possession of the Property.

15.8. The Application to the tribunal was made on 26 February 2020, which is within the period of 6 months from the date of service of the notices.

## **16. Findings in Fact and Law**

16.1. 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.**

**21 August 2020**

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