



**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/19/3576**

**Re: Property at Ground Left, 38 Gardner Street, Dundee, DD3 6DR (“the  
Property”)**

**Parties:**

**Mr George Bissett, 5 Gilston Place, Broughty Ferry, Dundee (“the Applicant”)**

**Ms Stevie Devlin, Ground Left, 38 Gardner Street, Dundee, DD6 6DR (“the  
Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member)**

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

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

**BACKGROUND**

1. By lease dated 8 October 2008 the Applicant let the Property to the Respondent;
2. The initial period of let was from 1 October 2008 until 1 April 2009;
3. A notice in terms of s32 of the Housing (Scotland) Act 1988 (the “1988 Act”) – commonly referred to as a form AT% - was served on the Respondent prior to commencement of the lease. The tenancy was, therefore, a short assured tenancy in terms of the 1988 Act;
4. A notice to quit, dated 30 April 2019, was served on the Respondent by recorded delivery post. This required the respondent to quit the Property by 23 October 2019;
5. A notice in terms of s33 of the 1988 Act, also dated 30 April 2019, was served on the Respondent, again requiring vacant possession as at 23 October 2019;

6. A notice in terms of s11 of the Homelessness (Scotland) Act 2003 was intimated to the relevant local authority on 4 November 2019;
7. An application for an eviction order was received by the Tribunal on 6 November 2019;

## **THE CASE MANAGEMENT DISCUSSION**

8. The Applicant did not attend the case Management Discussion but was represented by Mr M Piggott of Messrs Gilmartin Finlay MacRae Solicitors, Dundee;
9. The Respondent failed to attend. The Tribunal was in receipt of an execution of service by sheriff officers confirming that the place, date and time of the Case Management Discussion had been intimated to the Respondent, together with a copy of the case papers. In the circumstances the Tribunal, being satisfied in terms of Rule 24 of The First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the "FTT Rules") that the Respondent had received reasonable notice of the same determined that it was appropriate to proceed in accordance with Rule 29 of the FTT Rules;
10. It was noted that, while the application to the Tribunal erroneously noted the name of the Respondent as Stevie Bissett, the tenant was, in fact a Ms Stevie Devlin. The relevant case papers were served on Ms Stevie Bissett personally and a certificate of service from Sheriff Officers correctly designed her as personally receiving the papers. In the circumstances, despite the error in the application, all other documentation having correctly designed the Respondent, the Tribunal continued with the Case Management Discussion in her absence;
11. The Tribunal asked the Applicant's solicitor to address it in relation to the ish date of the lease
  - a) whether the Notice to Quit and notice in terms of s33 of the 1988 Act requested vacant possession on an ish date,
  - b) whether the notices required to coincide with an ish date in any event given the lengthy period of notice provided within them,
12. Mr Piggott made reference to the initial period of let being from 1 October 2008 until 1 April 2009 and asserted that that meant the initial let was for a period of 6 months and one day. At the expiry of that initial period of let the lease continued by tacit relocation. It was submitted that meant the next period of let was from 2 April 2009 until 2 October 2009, thereafter 3 October 2009 until 3 April 2010 and so on. On that basis it was asserted that the ish date was, indeed, 23 October 2019;
13. All other requirements for the order to be granted having been met, Mr Piggott moved the Tribunal to grant the order sought;

## **FINDINGS IN FACT**

14. The Tribunal found the following facts to be established:-
  - i. By lease dated 8 October 2008 the Applicant let the Property to the Respondent;



- ii. The initial period of let was from 1 October 2008 until 1 April 2009;
- iii. A notice in terms of s32 of the Housing (Scotland) Act 1988 (the "1988 Act") – commonly referred to as a form AT% - was served on the Respondent prior to commencement of the lease. The tenancy was, therefore, a short assured tenancy in terms of the 1988 Act;
- iv. A notice to quit, dated 30 April 2019, was served on the Respondent by recorded delivery post. This required the respondent to quit the Property by 23 October 2019;
- v. A notice in terms of s33 of the 1988 Act, also dated 30 April 2019, was served on the Respondent, again requiring vacant possession as at 23 October 2019;
- vi. A notice in terms of s11 of the Homelessness (Scotland) Act 2003 was intimated to the relevant local authority on 4 November 2019;
- vii. An application for an eviction order was received by the Tribunal on 6 November 2019;

## REASONS FOR DECISION

15. The formal legal requirements for an eviction order had been met, given that a Notice to quit, a notice in terms of s33 of the 1988 Act and a notice in terms of s11 of the Homelessness (Scotland) Act 2003 had all been served. The only issue other than that was whether the Notice to Quit and notice in terms of s33 of the 1988 Act were valid having regard to the ish date of the lease;
16. The Tribunal considered the matter and was of the view that while there may be merit in the submissions made by Mr Piggott about the period of let and the ish date, it was a matter which did not require to rest purely on that. The Tribunal had regard to the case of *McDonald v O'Donnell* [2007] CSIH 74 in which, when considering the issue in relation to a commercial lease, the Lord Justice Clerk stated:-

***[32] If this had been a tenancy of an agricultural holding the Pursuer's notice to quit would have been invalid. But since the lease in this case was, in my opinion, a commercial lease running from year to year, relocation could be prevented in any given year by an overt intimation by either party that he did not consent to the prolongation of the lease.....***

***[33] the Pursuer's notice to quit constituted such an intimation. Whatever the specified date of ish, it notified the Defender that the Pursuer would not consent to a prolongation for a further year. It was not suggested by counsel for the Defender that the period of notice was insufficient; and since the notice specified a date of removal that was later than the true anniversary date, the Defender was not prejudiced in any way by the error.***

17. The Tribunal considered that that reasoning was equally applicable to tacit relocation in relation to residential leases. In this case, even if the ish date was 1 October 2019 rather than 23 October 2019, the date of removal was beyond 1 October 2019 and the period of notice given, being in excess of

5 months, there was no prejudice to the Respondent in the event that there was any error in relation to the ish date.

## **DECISION**

The Tribunal granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988 and grants order to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property at Ground Left, 38 Gardner Street, Dundee, DD3 6DR and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Date of Order: Order not to be executed prior to 12 noon on 2 March 2020

## **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.**

Virgil Crawford

27 January 2020

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**Legal Member/Chair**

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**Date**