



**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/20/0500

**Re: Property at 116F Buttars Loan, Charleston, Dundee, DD2 4QA (“the
Property”)**

Parties:

**Miss Natalie Beattie, 18 Quarry Knowe, Dryborough, Dundee, DD2 2QL (“the
Applicant”)**

**Ms Cindy Kenny, 116F Buttars Loan, Charleston, Dundee, DD2 4QA (“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 9th February 2020 and 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 her application copies of the short assured tenancy agreement, form AT5, form AT6, notice to quit, section 33 notice, and Section 11 notice with proof of service.

All of these documents and forms 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.

The Tribunal, however, noted that the Applicant had not provided any proof of service of the notice to quit, section 33 notice, and form AT6, and requested that information from the Applicant.

The Applicant advised that she had served the documents by recorded delivery post, but had lost the details relating to that.

The Tribunal accepted the application, but issued a direction to the Applicant to produce evidence of service prior to the Case Management Discussion which was to be set.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 26th June 2020, and the Tribunal was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held at 10.00 on 5th August 2020 by Tele-Conference. The Applicant participated, and was not represented. The Respondent did not participate, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal enquired of the Applicant whether she was able to provide any proof of service of the notice to quit and section 33 notice. She indicated that she had made efforts to do so, but that these had been unsuccessful.

She had received a letter dated 11th February 2020 from a Law Centre acting on behalf of the Respondent with a mandate for them to act for her dated 5th February 2020. That letter did indicate that they had been consulted by the Respondent in response to her receiving a notice to quit from the Applicant, but unfortunately the letter did not indicate when the Respondent received the documents, and the letter itself was dated after the date given in the notices when the Applicant sought to recover possession of 1st February 2020.

The Tribunal explained the legal provisions and requirements which applied in this situation to the Applicant.

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:

- (1) the short assured tenancy has reached its ish;

- (2) tacit relocation is not operating; and
- (3) 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, together with a valid section 33 notice.

Unfortunately, although both the notice to quit and section 33 notice are valid and in the correct form, the Applicant is unable to prove the date of service. The letter she referred to from the Respondent's representative may well be sufficient to prove service, but it does not prove that service was effected timeously.

Section 33(2) of the *Housing (Scotland) Act 1988* provides that the period of notice which must be given to the tenant in respect of the notice stating that the landlord requires possession of the house is no less than two months. Section 38 of the *Sheriff Courts (Scotland) Act 1907* provides that no less than 40 days' notice must be given of the notice to quit. The Applicant is unfortunately not in a position to establish that service of the notices complied with either requirement, and accordingly the Tribunal must dismiss this application.

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.

Neil Kinnear

05/08/2020

Legal Member/Chair

Date