



**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/18/1878

Re: Property at 785 Mosspark Drive, Glasgow, G52 3AS (“the Property”)

Parties:

Mr Alan Bruce, 144 Eastwodmains Road, Glasgow, G76 7HF (“the Applicant”)

**Miss Stephanie Robertson, Mr Robert Murray, 785 Mosspark Drive, Glasgow,
G52 3AS (“the Respondents”)**

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 30th July 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 its application copies of the short assured tenancy agreement, forms AT5, notices to quit, section 33 notices, section 11 notices, and relevant executions of service.

The short assured tenancy agreement, forms AT5, and section 11 notices 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 notices to quit and section 33 notices 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 notices to quit and section 33 notices is 01/07/2018.

The lease makes provisions in relation to "Date of Entry and Duration" at paragraph 2 thereof in the following terms:

"The date of entry under this lease shall be Tuesday 1 November 2016 ("the Date of Entry")(regardless of the date or dates on which this Lease is signed by the Landlord and the Tenant) and this lease shall endure for the period to Tuesday 2 May 2017 ("the Expiry Date"), both dates inclusive. If the Tenant wishes to vacate the subjects on Tuesday 2 May 2017 then the Tenant must give the Landlord's agents not less than one month's notice in writing their intention to vacate the subjects on Tuesday 2 May 2017. If the agreement is not brought to an end by either party on Tuesday 2 May 2017, it will continue from month to month thereafter until terminated by prior written notice in accordance with the provisions of this lease given by either party to the other. The minimum notice to be given by a Landlord shall be in accordance with statutory provisions in force from time to time..."

It is quite clear from the terms of paragraph 2 of the lease that the *ish* date falls on the 2nd day of each month, so it must follow that 01/07/2018 is not an *ish* of the lease.

The Respondents had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 5th September 2018, and I was provided with the executions of service.

Case Management Discussion

A Case Management Discussion was held on 26th September 2018 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Mr Hardy, letting agent. The Respondents did not appear, nor were they represented.

The Tribunal drew Mr Hardy's attention to the dates in the notices to quit and section 33 notices 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 notices to quit are in the correct form, but specify a date which is not an *ish* of the lease. As a result, the notices are invalid and ineffectual. Similarly, the section 33 notices are also invalid and ineffectual as the tenancy has not reached its *ish* in consequence of the absence of valid notices to quit.

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

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

Legal Member/Chair

26/09/18

Date