

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/20/0127**

**Re: 19 Turfbeg Place, Forfar DD8 3LQ (“the property”)**

**Parties:**

**Karen Craig, c/o BS Properties, 24 South Tay Street, Dundee, DD1 1NR  
 (“the applicant”)**

**BS Properties, 24 South Tay Street, Dundee, DD1 1NR  
 (“the applicants’ representatives”)**

**Mr Jason McLean and Mrs Pauline McLean, 19 Turfbeg Place, Forfar DD8 3LQ  
 (“the respondents”)**

**Tribunal Member:**

**Adrian Stalker (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) determined that the requirements of section 33(1) of the Housing (Scotland) Act 1988 were met, and therefore, the Tribunal granted an order for recovery of possession of the property in favour of the applicants.**

**Background**

1. Reference is made to the note of the first CMD in this case, dated 21 August. That was continued to a further CMD, to allow production, by the applicants’ representatives of the AT5 served on the respondents, prior to the commencement of the tenancy.

2. A copy of an AT5 was provided to Tribunal in advance of the CMD. This is dated 31 October 2014, the same date as the execution of the lease by both parties. The lease contains a declaration, at clause 9 that:

“By signing this agreement and taking entry...the tenant acknowledges that they were served a Form AT5 prior to the creation of this tenancy, and understand the tenancy to be a short assured tenancy within the meaning of section 32 of the Housing (Scotland) Act 1988”.

### The second CMD

3. The second CMD duly took place, by teleconference call, at 10am on 5 October 2020. Ms Stacey Latham, of BS Properties, appeared for the applicant.

4. As at 10:10am, neither the respondents, nor any person appearing on their behalf, had entered the teleconference. Accordingly, the respondents did not appear, and were not represented, at the CMD. The Tribunal member was able to ascertain, on enquiry, that Tribunal's letters of 8 September to each of the respondents, giving notice of the CMD, had been sent by recorded delivery, and signed for, on 18 September. The respondents have not, at any time, played any active role in the proceedings relating to this application. They made no representations to the Tribunal, in advance of either of the CMDs.

5. Under rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, the First-tier Tribunal may do anything at a CMD which it may do at a hearing, including: hearing the case in the absence of one of the parties (rule 29), and making a decision. In the circumstances, the Tribunal was satisfied, under rule 29, that it was appropriate to proceed with the CMD, in the respondents' absence.

6. Ms Latham asked the Tribunal to grant an order, on the basis that all of the necessary documentation has now been produced to establish that the tenancy was short assured, and the requirements of section 33 of the 1988 Act have been met.

### Findings in fact, and in fact and law; reasons for decision

7. Reference is again made to the note of the previous CMD. The applicant has produced copies of:

- the tenancy agreement;
- a notice to quit dated 23 September 2019, which bore to take effect on 2 December, an ish date of the tenancy;
- a section 33(1)(d) notice dated 23 September, indicating that the applicant required possession on 2 December;
- a sheriff officers' certificate of execution of service of the notice to quit and the section 33(1)(d) notice, indicating that service took place on 24 September 2019;
- notice to the local authority (under section 19A of the Act); and

- the AT5, as already described, which predates the commencement of the tenancy, and which the tenants acknowledged receiving, by signing the lease.

8. The Tribunal was satisfied that these notices were in order.

9. Accordingly, the Tribunal was satisfied, in the absence of any opposition by the respondents, that the parties' tenancy was a short assured tenancy, and that: (a) the tenancy had reached its end; (b) the tenancy had been terminated on 2 December 2019 and tacit relocation was not operating; (c) there was no other contractual tenancy between the parties in existence; (d) notice had been given under section 33(1)(d) of the Act; (e) notice had also been given the local authority under section 19A of the Act.

10. The requirements for an order for possession under section 33(1) are met. Accordingly, the Tribunal is required to grant an order for possession under that provision.

### Decision

11. The Tribunal accordingly granted an order for possession under section 33 of the 1988 Act.

### **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.**



Adrian Stalker

**Legal Member**

**Date: 5 October 2020**