



**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/18/0521**

**Re: Property at 27 Eden Bank, Dundee, DD4 6EN (“the Property”)**

**Parties:**

**Sandown Ltd, Office 905 Liberty House, DIFC, United Arab Emirates (“the Applicant”)**

**Ms Sheta Abdullah al Safar, 27 Eden Bank, Dundee, DD4 6EN (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (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 for a possession order in terms of the Housing (Scotland) Act 1988. The Applicant was represented at the Case Management discussion by Mr Dal Chima and Mrs Laura Chima was present for part of the Discussion. The Respondent was not present but all papers received by the Tribunal including the details of the Hearing had been served on her by Sheriff Officer and I was in possession of an execution of service of these papers.**

**The Case Management Discussion**

**The Applicant’s representative confirmed that the application was in terms of Rule 66 and not Rule 65 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017. All of the papers served on the**

Respondent related to the requirements of an Application under rule 66 in any event and the Tribunal was prepared to proceed under Rule 66 of the rules. The Respondent did not appear and the Applicant sought to proceed in her absence under Rule 29 of the Rules and the Tribunal was prepared to proceed in her absence.

The Tribunal accepted that this was therefore an application for a Possession Order in terms of Section 33 of the Housing (Scotland) Act 1988.

The Tribunal had before it a lease, Form AT5 which was not signed as received by the tenant, a Notice to Quit, a notice under section 33 of the 1988 Act and a Notice in terms of section 11 of the Homelessness etc (Scotland) 2003.

The Tribunal had not seen executions of service for the Notice to Quit, the notice under Section 33 of the 1988 Act and details of service of the AT5. The Applicant's representative had these available at his home and the Tribunal allowed time for these to be brought. These were all found to be in order and had been served by Sheriff Officer other than the AT5 which was signed as received by the tenant prior to the commencement of the lease. The Notice to the local authority under the Homelessness etc (Scotland) Act 2003 had been served by post. As these were simply matters of service of documents the Tribunal did not consider that the late production of these documents prevented the Tribunal from proceeding in the absence of the Respondent who had chosen not to attend the Case Management Discussion.

### Findings in Fact

The Tribunal considered the lease and the required notices. This was a short assured tenancy and the AT5 had been served prior to the commencement of the lease. The Notice to Quit was in the correct form in terms of the prescribed content and both this notice and the notice in terms of Section 33 of the 1988 Act had been served appropriately and timeously.

The lease had originally been for the period of six months from 1/10/13 to 1/4/14. It continued thereafter on a month-to-month basis on the same terms and conditions. The Notice to Quit served on 15<sup>th</sup> December 2017 gave notice of a requirement to leave by 18 February 2018 and the Notice under section 33 of the 1988 Act gave notice of the requirement for vacant possession as of the same date. The Tribunal considered this and was of the view that the Notice to Quit was defective, as it did not mention the correct end date given that the lease continued on a month-to-month basis from the 1<sup>st</sup> of each month and so tacit relocation was still in operation.

### Reasons for Decision

The Tribunal was not satisfied that the requirements of section 33 of the Housing (Scotland) Act 1988 had been met to allow an order to be made as a valid Notice to Quit had not been served and tacit relocation was still in operation.

## **Decision**

**The Tribunal dismissed the application for a possession order.**

## **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.**

**V Bremner**

**Legal Member/Chair**

**Date: 24<sup>th</sup> May 2018**