

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



**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/18/2817**

**Re: Property at 6B Gowan Street, Arbroath, DD11 2BH (“the Property”)**

**Parties:**

**Angus Decorating Co, Kirkton Industrial Estate, Arbroath, DD11 3RD (“the Applicant”)**

**Mr Ewan Dear, 6B Gowan Street, Arbroath, DD11 2BH (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

**Decision in absence of the Respondent**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order should be granted.**

**Background:**

**On 4 December 2018 the Tribunal accepted for determination an application made on 17 October 2018 by the Applicant’s representatives for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988. The Applicant lodged with the application the Short Assured Tenancy Agreement commencing on 19 April 2016 as well as a copy of the AT5, the Notice to Quit dated 4 June 2018 and S 33 Notice dated 4 June 2018 and the Proof of service of same by Sheriff Officers, which confirmed service 7 June 2018. The bundle also contained the S 11 Notice to the Local Authority under the Homelessness etc (Scotland) Act 2003.**

**A Case Management Discussion (CMD) on 21 January 2019 was adjourned for a further CMD for clarification by the applicant of the ish date of the tenancy. The application and notice of a further CMD fixed for 11 March 2019 was intimated to the Respondent by Sheriff Officers on 18 February 2019. The CMD was attended by Lesley Davie accompanied by Ms Milne both from Direct Lettings (Scotland) Ltd on behalf of the Applicant. The Respondent did not**

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attend. The Respondent had not made any representations to the tribunal prior to the CMD. The intimation to the parties included the information that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application.

The Respondent had been given the 14 days notice required in Rule 24 of the Rules of Procedure.

#### **The Case Management Discussion:**

On behalf of the Applicant Ms Davie explained that the Respondent had not been in contact and although he had advised the Local Authority that he had moved out, the property was still full of his belongings and he had not returned the keys. She did not know whether the Respondent had actually moved out. No formal notice had been given by the Respondent to the Applicant. She referred to clause 37 of the tenancy agreement and the notice to quit and S 33 notice and moved for an order to be granted.

The Tribunal was satisfied on the basis of the documents lodged that that all requirements for recovery of possession in terms of the Housing Scotland Act 1988 had been complied with. No representations from the Respondent had been received by the Tribunal. It was accepted that a Notice to Quit and a Notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 had been served on the Respondent giving the required 2 months notice in terms of S33 of the Act and the require 40 days notice in the Notice to Quit.

The Tribunal concluded that as there facts in this case were not disputed by any representations from the Respondent, it was not necessary to fix a hearing.

If the tests of S 33 (1) of the Housing (Scotland) Act 1988 are met there is no discretion for the Tribunal and the order must be granted. All issues were discussed at the hearing and the facts of the case were clear.

#### **Findings in Fact:**

1. The Applicant and the Respondent entered into a Short Assured Tenancy on 19 April 2016 for a 6 months period with an initial ish on 19 October 2016 as per clause 1 of the tenancy agreement.
2. In terms of clause 37 of the tenancy agreement, if not terminated, the tenancy agreement will continue on a month to month basis and may be ended by the landlord giving two months notice in writing to terminate the tenancy.
3. Notice to Quit was served on the Respondent by Sheriff Officers on 7 June 2018 advising of the termination of the tenancy on the termination date of 19 August 2018.
4. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent by Sheriff Officers on 7 June 2018 advising of the intention to repossess the premises on 19 August 2018.



5. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
6. The Respondent continued to occupy the property at the date of the CMD.

**Reasons for the Decision:**

The Tribunal make the decision on the basis of the written evidence lodged by the Applicant and on the unopposed motion of the Applicant. There was no dispute about the facts of the case.

In terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its ish
2. That tacit relocation is not operating
3. That no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
4. That the landlord has given to the tenant notice that he requires possession of the house.

In this case there was not dispute that the tenancy is a short assured tenancy which had reached its ish. The landlord had served a notice to quit with the required 40 days notice period and thus tacit relocation did not operate. The contractual tenancy had come to an end. The landlord had served on the Respondents a notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 with the required 2 months notice period.

The Tribunal has no discretion in the matter. The conditions for an order for possession in terms of S 33 (1) of the Housing (Scotland) Act 1988 have been evidenced by the Applicant in the documentation lodged and are not disputed. Thus the Tribunal grants the order for possession as per 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.

Mrs Petra Hennig-McFatridge

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Legal Member/Chair

11 March 2019  
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Date