

**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/18/0441**

**Re: Property at 22 Huntly Avenue, Deans, Livingston, West Lothian, EH54 8EX  
("the Property")**

**Parties:**

**Mr Brian Sharkey, East Wing Cottage, Skivo Farm, Livingston, West Lothian,  
EH54 9AN ("the Applicant")**

**Ms Alison Nimmo, 22 Huntly Avenue, Deans, Livingston, West Lothian, EH54  
8EX ("the Respondent")**

**Tribunal Members:**

**Graham Harding (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that it should make an Order against the Respondent for  
possession of the Property under Section 33 of the Housing (Scotland) Act  
1988 ("the 1988 Act").**

**Background**

- 1. By application dated 16/02/2018 the Applicant applied to the Tribunal for  
an order for recovery of possession of the property occupied by the  
Respondent on the grounds that there was a Short Assured Tenancy  
that had reached its term in terms of section 33 of the 1988 Act.**
- 2. The Respondent's application was accepted by the Tribunal on 27<sup>th</sup>  
March 2018 and intimation of a Case Management Discussion to take  
place at George House, 126 George House, Edinburgh on 22 May 2018  
was sent to the parties. Intimation to the Respondent was by Sheriff  
Officers on 27<sup>th</sup> April 2018.**

3. The Applicant provided the Tribunal with copies of the Tenancy Agreement, the Form AT5 and the Notice to Quit served by Sheriff Officers.
4. The Respondent made no written representations.

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

5. The Case Management Discussion was held on 22 May 2018. It was attended by the Applicant. The Respondent did not attend nor was she represented.
6. The Applicant confirmed that the Form AT5 had been left with the Respondent on the 1<sup>st</sup> of June 2016 and signed by her prior to the Tenancy Agreement being signed by her at 5.00pm the same day. The Applicant said that he was confident that the Respondent understood that she was entering into a Short Assured Tenancy as she had been a tenant of his previously on another Short Assured Tenancy.
7. The Applicant explained that he had taken the decision to terminate the tenancy as the Respondent had fallen into arrears of rent after she had obtained employment and her Housing Benefit had been cut.
8. The Applicant said he instructed Sheriff Officers to serve the Respondent with a Notice to Quit giving the Respondent the requisite two months notice in November 2017. The Respondent ought to have removed from the property on 1<sup>st</sup> February 2018 but was still living in the property and no rent was being paid.
9. The Applicant said that until very recently the Respondent had not been communicating at all with him but had in the last week or so indicated that she would shortly be moving out.
10. The Applicant confirmed that he had complied with the statutory requirement to inform the local authority of his raising of the application to recover possession of the property. He thought that the Respondent would be re-housed by the local authority as she had four or five children.

#### **Findings in Fact**

11. The Respondent entered into a Short Assured Tenancy of the Property commencing on 1<sup>st</sup> June 2016 for a period of 6 months and continuing thereafter on a monthly basis until terminated by either party giving not less than 2 months notice to the other party.
12. The Applicant served a Notice to Quit by Sheriff Officers on 27th November 2017 giving the Respondent until 1<sup>st</sup> February 2018 to vacate the property.
13. On the day of the Case Management Discussion despite indicating to the Applicant that she intended moving out the Respondent was still occupying the property.
14. The tenancy having reached its end and the Notice to Quit having been properly served the Applicant is entitled to possession of the property.

#### **Reasons for Decision**

15. The Applicant provided adequate documentation to satisfy the Tribunal that there was a properly constituted Short Assured Tenancy in place between the parties that was continuing on a month to month basis.
16. It appeared to the Tribunal that the Notice to Quit had been properly served and that the Respondent had not vacated the property.
17. The Respondent had been given an opportunity to attend the Case Management Discussion or to lodge written representations but had chosen not to do so. In all the circumstances it was reasonable to grant the order sought by the Applicant.

#### Decision

18. In all the circumstances the Tribunal finds that the Applicant is entitled to an order against the Respondent for Possession of the property under Section 33 of the 1988 Act and for Officers of Court to Eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings from the property.

#### 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.

Graham Harding

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Legal Member/Chair

22 May 2018  
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Date