Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/19/2335

Re: Property at 16 North Junction Street, Flat 2f2, Leith, Edinburgh, EH6 6HN ("the Property")

Parties:

Express investment Co Ltd, Drummond Miller LLP, Glenorchy House, 20 Union Street, Edinburgh, EH1 3LR ("the Applicant")

Mr Colin Brown, 16 North Junction Street, Flat 2f2, Leith, Edinburgh, EH6 6HN ("the Respondent")

Tribunal Members:

Josephine Bonnar (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for possession of the property should be granted in favour of the Applicant.

Background

1. By application received between 23 April and 14 August 2019 the Applicant seeks an order for possession of the property in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") and Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). A number of documents were lodged in support of the application.

2. A copy of the application and supporting documents were served on the Respondent on 10 September 2019. The case called before a Legal Member of the Tribunal for a Case Management Discussion ("CMD") on 11 October 2019. At the CMD and, following discussion with the parties and their representatives, the Legal Member determined that the case should be

continued to a hearing. A hearing was scheduled for 22 November 2019. Prior to the hearing taking place the Respondent's solicitor sought a postponement as legal aid was not in place. A Legal Member of the Tribunal granted the postponement and a further hearing was arranged for 17 January 2020 at Riverside House, Gorgie Road, Edinburgh. Prior to the hearing the Respondent made a further request for a postponement as he had been refused legal aid, his solicitor had withdrawn, and he required further time to instruct a new representative. He submitted a letter from his GP in support of the request. The Tribunal considered the request together with the medical evidence and refused the request.

3. The application called before the Tribunal for a hearing on 17 January 2020. Mr Buchanan, a director of the Applicant attended, represented by Mr Henderson, Advocate. The Respondent also attended, represented by Mr Wightman, MSP. Two witnesses attended for the Applicant, Derek Gibb and Sonia Harper.

4. Prior to the hearing both parties had lodged written representations. The Applicant also lodged an Inventory of Productions which included a copy tenancy agreement dated 1992 ("the 1992 tenancy"), which the Respondent had also lodged prior to the CMD, and which had been the subject of discussions at the CMD. The documents lodged also included a copy tenancy agreement dated 26 September 2001 ("the 2001 tenancy"), an AT5 Notice dated 26 September 2001, a copy tenancy agreement dated 25 September 2002 ("the 2002 tenancy"), a copy Section 33 Notice dated 19 May 2019, a copy Notice to Quit dated 20 May 2019, a Sheriff Officer certificate of service in relation to both notices dated 21 May 2019 and a copy Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 (the 2003 Act"). Copies of a number of letters were also lodged.

The Hearing

5. Prior to the start of the hearing Mr Wightman lodged a written submission. He advised the Tribunal that it was not a formal written submission, but rather his notes on the submission he wished to make to the Tribunal. Mr Henderson advised that he did not oppose the late lodging of the written submission but did object to some of the content being considered by the Tribunal, as it raised a new matter which had not been raised in advance and had not been discussed at the CMD. Mr Henderson referred the Tribunal to the Note issued following the CMD which identified the issues to be determined at the hearing as being, (i) Was the 1992 tenancy an assured or short assured tenancy, (ii) Was an AT5 Notice given to the Respondent before he signed the 1992 tenancy and (iii) Was the 1992 tenancy terminated before the short assured tenancies (2001 and 2002) were created. Mr Henderson advised the Tribunal that previous written submissions addressed these issues and that the hearing should be confined to those issues. He pointed out that the submission lodged immediately prior to the hearing challenged the status of the 2002 agreement on the grounds that no AT5 Notice has been produced in connection with same. The Tribunal adjourned to consider the matter. The

Tribunal determined that the status of the 2002 agreement was material to the application before the Tribunal and, having regard to the overriding objective, that the Respondent should be allowed to lead evidence and make submissions on the issue. The Tribunal offered the Applicant an adjournment of the hearing, should they require time to investigate the issue and identify other witnesses. Mr Henderson advised that he did not require an adjournment and thought that the witnesses already listed could cover any relevant factual issues connected to the new matter raised.

6. The Tribunal proceeded to clarify issues with the parties and identify the factual and legal matters to be determined These were identified as being - (i) Is the 1992 tenancy a short assured tenancy? (ii) Was the 1992 tenancy ever terminated, and if not, does it continue to operate as the tenancy contract between the parties? (iii) If the 1992 tenancy was terminated, is the 2002 tenancy the current tenancy contract between the parties? (iv) Is the 2002 tenancy a short assured tenancy?

The Evidence

7. Derek Gibb. Mr Gibb stated that he is currently the Property Manager of Derek Gibb and Partners. He has worked in property management since 1989, initially for James Gibb and Co, a family firm. This was sold in 2012 and he started his current firm. He advised the Tribunal that 1989 was a time of significant change in the private rented sector, as the 1988 Act had just come into force. In response to a question about the practice of the firm when signing up tenants to short assured tenancy agreements, he advised that the tenant or prospective tenant would come into the office. They would be issued with the AT5 Notice, sign the short assured tenancy agreement, pay their money and be issued with keys. The agreement and the AT5 would be word processed together, although they also had pre-printed ones. He has no recollection of Mr Brown or his tenancy. However, his usual practice was to give the tenant/prospective tenant a "spiel" which included information about the short assured tenancy and how it differed from previous types of tenancy.

8. Mr Gibb was referred to a number of copy letters in the Applicant's Inventory. The first, a letter to Drummond Miller on 30 September 1992, confirms that the property has been let to Mr Brown on a short assured tenancy. The second, dated 15 December 1992, asks for authority to grant Mr Brown (and another short assured tenant) new tenancies of the properties they occupied. Mr Gibb confirmed that, in the early years, the practice was always to issue a notice to quit at the end of the tenancy and have a new tenancy signed if the tenant was to remain in the property. At some point this changed, and tenancies could roll on after the initial term, so that new agreements were not needed. Mr Gibb confirmed that leases and associated paperwork were retained and kept in storage by the firm. He is unable to say what happened to the old leases when the business was sold. He advised the Tribunal that service of the AT5 Notice was an ingrained part of the sign up process. He and other employees knew that it was essential for the creation of a short

assured tenancy.

9. In response to questions from Mr Wightman Mr Gibb again confirmed that he has no memory of Mr Brown and his tenancy. He confirmed that tenants usually came into the office reception and were issued with their AT5 and signed the lease there. He advised that James Gibb ceased to act for the Applicant at some point, maybe during the late 1990's, and Drummond Miller took over and managed their properties thereafter. All current leases would have been passed to Drummond Miller at that time, but he doesn't know what happened to the old leases. They might still be in storage.

10. Sonia Harper. Ms Harper stated that she worked at Drummond Miller from 1992 until 2009. She started as a receptionist in the lettings department and in due course became lettings manager. Ms Harper confirmed that she remembers Mr Brown as he came into the office regularly to pay his rent and she usually dealt with this. She was also responsible for the tenancy sign up and confirmed that she signed both the 2001 and 2002 tenancies, although she cannot remember doing so. Ms Harper advised the Tribunal that tenants usually signed their new agreements at reception, unless there was a meeting room available. They were issued with an AT5 before signing as this was required for the creation of a short assured tenancy. In response to a question Ms Harper said that she would not have told Mr Brown that he had as assured tenancy, as she was aware that he did not. She confirmed that when someone came in to sign a tenancy, they would first be given the AT5 and asked to read and sign it. Thereafter they were asked to do the same with the agreement. If they had any questions, then these would be addressed before they signed. She conceded that new tenants tended to have more questions than existing tenants and the latter would not necessarily be given as much information. In response to a question that she said to Mr Brown that he was "in with the bricks" she advised that she had no recollection of making the comment.

11. In response to questions from Mr Wightman Ms Harper confirmed that she has no specific recollection of the signing of the 2001 and 2002 tenancies. She confirmed that the AT5 Notice was usually stapled to the signed agreement and could offer no explanation for the lack of a copy of an AT5 for the 2002 tenancy.

12. The Respondent. Mr Brown advised the Tribunal that he has lived at the property for 27 and a half years. When asked about the 1992 tenancy he confirmed that it has his signature on it, but he can't remember signing it. He has no recollection of seeing or receiving a AT5 Notice. He has no memory of the 2001 tenancy. He advised that he remembers Sonia Harper as he saw her regularly when he went to Drummond Miller's offices to pay his rent. This would always be at the reception desk in the office. He also remembers signing tenancy agreements at reception. Mr Brown stated that he does remember signing the 2002 tenancy. When he went to the office to do this Sonia Harper had a plaster on her nose and there was some conversation about that. He remembers her telling him that the 2002 tenancy was a new type of lease which meant that he would not require to come back every year

to sign a new agreement. She implied that this was to Mr Brown's advantage. During the discussion she described him as being "in with the bricks". He recalls that those exact words were used but not the context of the words, although it was during a discussion about the new tenancy. He does not remember seeing or signing an AT5 during the meeting. He told the Tribunal that this meeting was the last time he saw Sonia Harper. A short time later he started paying his rent by standing order and did not have occasion to go to Drummond Miller's offices. In response to questions Mr Brown confirmed that he received the Notice to Quit last year and immediately contacted Drummond Miller. He also sought advice on the matter and had to contact Drummond Miller for a copy of the lease. When it arrived, it had an AT5 attached, but this was dated September 2001.Drummond Miller advised him that the Applicant was selling properties and that they needed vacant possession of the property to get the best price for the shareholders.

13. In response to questions from Mr Henderson, Mr Brown stated that he does not recall Ms Harper saying to him that he had an assured tenancy, as opposed to a short assured tenancy. He only remembers the phrase "in with the bricks" and being told that the new lease was better for him because he wouldn't need to go back to sign further agreements. He confirmed that he cannot recall how many agreements he signed over the years, but more than one, probably a few. In conclusion Mr Brown stated categorically that would not have read over the agreement before signing it, he never did. The agreement might include a clause which acknowledged receipt of an AT5, but he would not have read that before he signed. He trusted Drummond Miller. He now realises that his trust was misplaced.

The submissions

14. The Applicant. Mr Henderson lodged a bundle of authorities. He advised the Tribunal that the main issue to be determined was whether the later tenancies, in particular the 2002 tenancy, were trumped by the 1992 tenancy. He pointed out that the Respondent cannot recall whether he received AT5s in 1992 or 2002. He firstly referred the Tribunal to Robson and Combe Residential Tenancies (4th Edition), and in particular to paragraph 2-39 which relates to AT5 Notices, "It should be noted that if neither of these requirements was fulfilled then the default position, where the term was too short or there was no AT5 or a late AT5, was an assured tenancy. The safest course was for the service of the AT5 notice and the signing of the lease to take place on different days. Typically, in practice, landlords and their agents included a condition in the lease which narrated that prior to the signing of the lease, the landlord had served an AT5 notice on the tenant. Where the tenant signed a lease which included an acknowledgement that before the lease an AT5 has been served then the courts have taken the view that it was reasonable to infer that the AT5 has been read prior to signing rather than after." Mr Henderson then referred the Tribunal to a Sheriff Court decision Key Housing Association v Cameron 1999 Hous.L.R. 47. A tenancy agreement contained a clause which stated that in signing the agreement and taking entry the tenant acknowledged receipt of the statutory form notifying

the tenant that it was a short assured tenancy. The landlord raised a summary cause action for possession of the property, following service of the relevant notices in terms of Section 33 of the Act. The tenant defended the action stating (inter alia) that an AT5 notice had not been served before the creation of the tenancy and therefore a short assured tenancy had not been created. The Sheriff found in favour of the landlord on the basis that, by acknowledging receipt of the notice, the tenant must have been acknowledging prior receipt of the notice, and therefore the tenancy was a short assured tenancy. The tenant appealed, although the appeal was abandoned. In the stated case prepared by the Sheriff for the appeal he states at paragraph 9-16 " I considered further that s32(1)(b) of the Act had been complied with. The appellants position was simply that she did not recall whether or not the Form AT5 had been served on her prior to parties signing the tenancy agreement. It is a reasonable inference that the appellant read the agreement before, and not after, signature – it was not in any event suggested otherwise. It was not suggested that the appellant did anything other than certify the position when she signed the tenancy agreement. In my opinion, in these circumstances, the appellant in acknowledging receipt of the form AT5 in art 13 of the tenancy agreement must have been acknowledging prior receipt, the tenancy in my opinion being created on parties execution of the agreement. I therefore concluded the tenancy was a short assured tenancy in terms of the Act." Mr Henderson then referred the Tribunal to Walker on Evidence (4th Edition 3.6.1) and to the general presumption "that everything is done validly and in accordance with the necessary formalities" which "carries particular weight when it is sought to disturb an earlier transaction after a long period of time". He then referred to the Lord Chancellor's decision in the case of William Bain and others v Assets Company 1905 7F (HL) 104 at 106 "it appears to me that the matter rests, not upon any question of technical law, but upon broad common sense and especially upon these two principles – that at this distance of time every intendment should be made in favour of what has been done as being lawfully and properly done and that persons who are now insisting upon those rights have lain asleep upon their rights so long that as a matter of fact we know that witnesses have perished and the opportunities which might have been had if the question had been earlier raised have passed away." Mr Henderson advised the Tribunal that these statements are very much relevant to the present case, where the claim that no AT5 had been served in 1992 and 2002 is only being raised now and that the presumption should be that the AT5 was indeed served and a short assured tenancy created. He referred the Tribunal to the evidence of both the Applicant's witnesses who said that the AT5 was a routine part of the sign up process and would not have been omitted.

15. With regard to the witnesses Mr Henderson invited the Tribunal to find both the Applicant's witnesses to be credible and reliable. He submitted that it was clear from their evidence that there was a robust process in place following the introduction of the 1988 Act. Neither firm was "some haphazard organisation" who arrange the occasional let of a property. Both James Gibb and Drummond Miller were well run, and the employees were well aware of the need to issue an AT5. The Respondent should not be able to rely of the fact that a copy of the notice is not available. It is also significant, following Mr

Brown's evidence, that what was said to him in 2002 was much less sinister that what is claimed in his written submissions, which state that he was told he had an assured, not a short assured, tenancy. What was clear from Mr Brown's evidence was that he was told that the signing of the 2002 tenancy meant that he would not need to sign any further leases, which was, in fact, true.

16. Mr Henderson concluded his submission by referring the Tribunal to the previous written submissions by both parties when they referred to a section in Adrian Stalker's " Evictions in Scotland". On page 88, Mr Stalker states "The term winkling denotes the process by which a landlord seeks to end an existing statutory tenancy and replaces it with a tenancy in which the tenant has a lesser form of security of tenure. It is appropriate to deal with this issue in the context of short assured tenancies, because in practice the landlord invariably seeks to winkle a regulated or assured tenant so that he becomes a short assured tenant. In short, an assured tenant may be winkled; a regulated tenant may not." On page 89 Mr Stalker goes on to state "It is however possible for the parties to an assured tenancy to replace it with a short assured tenancy. Section 16(1) of the 1988 Act provides that following termination of the parties contractual tenancy, a statutory assured tenancy arises if the tenant retains possession of the house "without being entitled to do so under a contractual tenancy ". Subsection (2) provides that a statutory assured tenancy cannot be brought to an end by the landlord except by obtaining an order of the Sheriff. Thus it is clear that the statutory assured tenancy may be ended by both parties entering into a new contractual tenancy, which may of course be a short assured tenancy". In response to questions from the Tribunal, Mr Henderson conceded that this passage was not directly relevant to the application being considered, as no evidence had been led or submissions made that any of the Respondent's tenancies had become a statutory assured tenancy. It appeared that the Applicant had signed a series of agreements with a new one probably being signed at the end of the term of its predecessor. Mr Gib had indicated that Notices to Quit were generally served, but no evidence was given that this had happened in relation to the Respondent. The 2002 tenancy was signed the day that the 2001 tenancy reached its ish. Mr Henderson accepted this and confirmed that the Applicant's position is that the 2002 tenancy superseded any previous agreement and was a short assured tenancy. He could offer no explanation for the inability of the Applicant to provide a copy of the AT5 but stated that the evidence supports the claim that this was issued.

17. The Respondent. Mr Wightman referred the Tribunal to his written submission. He confirmed that he had no issue with the evidence given by the witnesses and invited the Tribunal to take a similar view in relation to Mr Brown's evidence. He stated that the Applicant is a corporate entity who wrote to him to confirm that they were liquidating their assets, including selling off properties. They had chosen to seek vacant possession of the property although they could have sold it with Mr Brown as a sitting tenant. Mr Wightman advised the Tribunal that the evidence does not support the claim that Mr Brown was a tenant under a short assured tenancy. He has signed at least three leases, copies of which have been produced. It is likely, given Mr

Gibb's evidence, that there was a new agreement every year. The purpose of an AT5 Notice is to protect the interest of the tenant. It is an important document. The language of the Act is very clear - the AT5 must be issued for a short assured tenancy to be created. No AT5 notices have been provided for either the 1992 or 2002 tenancies. The Applicant is not an amateur landlord who might misplace an important document. The fact that organisations such as James Gibb and Drummond Miller cannot produce these documents supports the inference that they don't exist. There is no evidence that the notices were issued.

18. Mr Wightman asked the Tribunal to conclude that the 1992 and 2002 tenancies have not been established to be short assured tenancies. Furthermore, as no evidence has been produced that the 1992 agreement was ever terminated, then this agreement subsists as the current tenancy agreement between the parties. If, however, the 2002 tenancy is the current tenancy, this is not a short-assured tenancy given the absence of an AT5. If such a notice had been issued it would be reasonable to expect a reputable firm to be able to produce it. Mr Wightman made reference to the argument put forward by Mr Henderson that the lack of the AT5 should have been raised many years ago and is now too late. He pointed out that Mr Brown had no occasion to raise it previously. He has lived at the property for 27 years, with no suggestion (until the notice to quit last year) that he could not continue to do so.

19. Mr Brown asked the Tribunal to bear in mind that the property which is the subject of the application is his home and has been so for 27 years. The Tribunal's decision is one which will affect the rest of his life. He believes there is no reason why the property cannot be sold with him remaining as tenant.

Findings in Fact

20. The Applicant is owner and landlord of the property.

21. The Respondent is the tenant of the property and has resided there since 1992.

22. The Respondent signed a tenancy agreement on September 2002. This agreement is the current tenancy agreement between the parties.

23. Prior to the signing of the 2002 tenancy agreement an AT5 Notice was issued to the Respondent.

24. On May 2019 a Notice to Quit and Section 33 Notice were served on the Respondent by Sheriff Officer

25. The Respondent remains in occupation of the property.

Reasons for Decision

26. Section 32 of the 1988 Act states " (1) A short assured tenancy is an assured tenancy – (a) which is for a term of not less than six months: and ((b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1) (b) above is one which – (a) is in such form as may be prescribed: (b) is served before the creation of the assured tenancy: (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy." Section 33 states (1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of the Act, **the First-tier tribunal shall make an order for possession of the house of the Tribunal is satisfied (a) that the short assured tenancy has reached its ish; (b) that tacit relocation is not operating and (d) that the landlord (or,where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house."**

27. The 1992 tenancy. The Respondent argues that the 1992 tenancy is an assured tenancy, not a short assured tenancy, because an AT5 was either not issued at all, or not issued before the creation of the tenancy. They also argue that, as this tenancy was never terminated, it is the current tenancy for the property. This being the case, the Applicant is not entitled to an order for possession in terms of Section 33 of the 1988 Act. The Respondent relies on the failure by the Applicant to produce a copy of an AT5 for this tenancy. He also refers to the comments contained within Adrian Stalker's book on the subject. (See paragraph 16)

28. The Tribunal is not persuaded by the Respondent's argument. The passages from Adrian Stalker, which are referred to by both parties, deal with a situation where a contractual assured tenancy has been brought to an end and a statutory assured tenancy arises. A new contractual short assured tenancy is then signed, to replace the statutory assured tenancy. The Tribunal notes that Mr Stalker states that it is possible for a short assured tenancy to be created in these circumstances, where parties sign up to a new agreement. However, the Tribunal was not provided with any evidence that the 1992 tenancy was terminated by the Applicant serving notice on the Respondent. As a result, it does not appear that it became a statutory assured tenancy. It follows that the passages from Mr Stalker's book do not apply. If they did, they appear to support the Applicant's argument, and not the Respondent. From the evidence given by Mr Gibb (and to a certain extent by Mr Brown), it seems likely that the 1992 tenancy was the first of several tenancy agreements signed by the Respondent between 1992 and 2001. In 2001 he

signed a new agreement, a short assured agreement for which an AT5 has been produced. That is not in dispute. That agreement superseded any previous agreements, including the 1992 tenancy. In turn, the 2001 tenancy was superseded by the 2002 tenancy, which the Respondent also accepts was signed. The Tribunal concludes that the 1992 tenancy was not the current agreement in operation at the time of Service of the Notice to Quit and Section 33 Notice. This being the case, the Tribunal does not require to determine whether the 1992 agreement was an assured or short assured tenancy. On the basis of Mr Gibb's evidence that an AT5 Notice was always issued, the fact that the agreement is described on page one as a short assured tenancy and contains a clause which acknowledges receipt of the AT5 Notice, it seems likely that it was a short assured tenancy. However, as it has been superseded by later agreements, the Tribunal does not require to be satisfied on this matter.

29. The 2002 tenancy. Although there is correspondence from 2005 which refers to a new tenancy agreement being prepared to reflect a rent increase, neither party produced any evidence that this actually happened. The Tribunal is satisfied that the 2002 tenancy was the last agreement signed by the parties and is the current tenancy for the purposes of the application to the Tribunal. Clause 1)a) of the agreement states " The lease will begin on the twenty fifth day of September 2002 and will end subject to the other relevant conditions of this lease, on the twenty fifth day of September 2003 **and will continue thereafter on a two monthly basis until terminated** by either party giving no less than one months notice in writing to the other party". The Respondent confirms that he signed this tenancy agreement and says that he can recall his visit to Drummond Miller's offices to do so. It had been suggested in submissions lodged on behalf of the Applicant, that he was told during this meeting that he had an assured and not a short assured tenancy. Ms Harper had no recollection of the meeting, as it was a long time ago. The only evidence as to the content of any discussions came from Mr Brown himself who recalls being told that the new agreement was to his advantage, because he wouldn't have to sign any further leases, and that he was re-assured by Ms Harper who said he was "in with the bricks". The Tribunal accepted Mr Brown's evidence on this matter. Firstly, it seems likely that he was told that a benefit of the new agreement would be that he did not need to come in again to sign further leases. The provision in the document that the tenancy would continue on a two monthly basis had precisely that effect. The Tribunal also accepts that he may have been told that he was "in with the bricks". He could not recall the context of the remark but, as he had been the tenant of the property for 10 years, it could just have been a reference to that. The Respondent said in his evidence that he had been misled at that meeting as to the benefits of the new agreement. The Tribunal is not persuaded by this complaint. The 2001 tenancy was also a short assured tenancy and, had the 2002 agreement not been signed, the Applicant could have relied on section 33 of the 1988 Act to bring that tenancy to an end. There was nothing in the Respondent's evidence which supported the claim that he had been misled

30. The Tribunal proceeded to consider whether the 2002 tenancy is a short assured tenancy in terms of the 1988 Act. No copy AT5 Notice has been

produced and the Applicant cannot provide an explanation for this, other than possible clerical error. The Respondent cannot recall being given an AT5 on this or any previous occasion, although it is not disputed that an AT5 was issued for the 2001 tenancy, a copy of which has been produced. The Tribunal notes that there is no requirement for an AT5 Notice to be signed by a tenant. There is no requirement for a landlord to retain a copy of the AT5 which has been issued. All that is required is that the Notice is given before the tenancy is created. Where an AT5 Notice is issued just before an agreement is signed it is usual for the time as well as the date of signing documents to be notes. Again, this is not essential, but a sensible step to take. The Applicant cannot produce a copy of the document but relies principally on the clause in the tenancy which states "7(b) Notice is hereby given by the attached AT5, that the tenancy created by this lease is a short assured tenancy in terms of Section 32 of the Housing (Scotland) Act 1988. The tenant by his acceptance hereof acknowledges that notice in terms of the said Act has been given to him prior to his entering into this lease". The Respondent advised the Tribunal that he would not have read the agreement before signing it. He did not suggest that he was not given the opportunity to do so, just that he didn't think it was necessary. The Tribunal does not accept that explanation. The Respondent clearly understood that tenancy agreements are important documents which regulate a tenant's occupation of the property to which they relate. Having signed the agreement, the Respondent is bound by the terms of same, whether he took the opportunity to read it carefully or otherwise. Having regard to the authorities referred to by the Applicant, and in particular the decision in Key Housing Association v Cameron, the Tribunal concludes that it is entitled to infer from the clause in the tenancy agreement that an AT5 was issued before the lease was signed. Having regard to the evidence led at the hearing, the Tribunal is satisfied, on the balance of probabilities, that an AT5 Notice was issued to the Respondent before the 2002 tenancy was signed and that a short assured tenancy was therefore created.

31. The Tribunal notes that the Applicant has served a valid Notice to Quit and Section 33 Notice on the Respondent prior to lodging the application with the Tribunal. The Applicant has also served a notice in terms of Section 11 of the 2003 Act on the local authority. The Applicant has complied with the requirements of section 33 of the 198 Act and is therefore entitled to an order for possession of the property.

Decision

32. The Tribunal determines that an order for possession of the property shall be granted in favour of the Applicant

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.

17 January 2020

Josephine Bonnar,
Legal Member/Chair