



**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/18/2562**

**Re: Property at 3/R, 190 Lochee Road, Dundee, DD2 2NF (“the Property”)**

**Parties:**

**Ms Helen Armstrong, 38 Blackhill Crescent, Glasgow, G23 5NF (“the Applicant”)**

**Ms Sheryl McAllister, 3/R, 190 Lochee Road, Dundee, DD2 2NF (“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.**

On 4 October 2018 the Tribunal accepted for determination an application made by the Applicant through their agents Struan Baptie Property Management Ltd for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988. The application included a copy of the Short Assured Tenancy Agreement dated 24 August 2017 as well as a copy of the AT5, the Notice to Quit dated 24 July 2018 and S 33 Notice dated 24 July 2018 and AT6 form also dated 24 July 2018 and the Proof of Service by Sheriff Officers of said documents on the Respondent on 25 July 2018. The bundle also contained the S 11 Notice to the Local Authority under the Homelessness etc (Scotland) Act 2003.

The application was intimated to the Respondent and a Case Management Discussion (CMD) fixed for 13 November 2018 at 10 am in the Hilltown Community Centre. The intimation was made by Sheriff Officers on 23 October 2018.

No representations were received by the Respondents.

A change of address for the venue at Hilltown Community Centre was posted to the parties on 7 November 2018 and the venue assistant also waited at the address in the original intimation of the date, time and venue at 10.00 to ensure that if the Respondent attended the originally intimated address they would be redirected to the new site of Hilltown Community Centre nearby. Nobody attended at the originally intimated address at 10.00 am and the Respondent did not attend at the Hilltown Community Centre. Mr Baptie for the Applicant attended the Case Management Discussion on behalf of the Applicant at the new site.

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 of the date and time of the CMD.

#### The Hearing:

The Applicant's representative advised there had been contact from the Respondents after the Notice to Quit and S 33 notices had been served but there had been no recent contact.

No challenge to the application and to the reasons set out in the Application has been received by either the Applicant nor the Tribunal.

The Tribunal was satisfied on the basis of the documents lodged that that all requirements for repossession in terms of the Housing Scotland Act 1988 had been complied with. 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 on 27 July 2018 giving the required 2 months notice in terms of S33 of the Act and the required 40 days notice in the Notice to Quit. Mr Baptie for the Applicant referred the Tribunal to S 33 (1) of the Housing (Scotland) Act 1988 and moved for an order for repossession of the property.

The Tribunal concluded that as there facts in this case were not disputed by any representations from the Respondent, it was not necessary to adjourn the case to 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. The facts of the case were clear and undisputed.

#### Findings in Fact:

1. The Applicant and the Respondent entered into a Short Assured Tenancy on 24 August 2017 with an original end date at 25 February 2018 (Clause 1.1 of

the Tenancy Agreement) with a continuation on a monthly basis thereafter (Clause 1.1).

2. Notice to Quit was served on the Respondent by Sheriff Officers on 25 July 2018 advising of the termination of the tenancy on the ish on 25 September 2018.
3. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent Sheriff Officers on 25 July 2018 advising of the intention to repossess the premises on 25 September 2018.
4. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
5. The Respondents had given no intimation of leaving the property.

#### Reasons for the Decision:

The Tribunal make the decision on the basis of the written evidence lodged by the Applicants 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 on 25 February 2018 and continued thereafter month to month. The landlord had served a notice to quit with the required 40 days notice period on 27 July 2017 for the ish on 25 September 2018 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 on 25 July 2018.

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 Applicants in the documentation lodged and are not disputed. Thus the Tribunal grants the order for possession as per the application.

Decision:

The Tribunal makes an order for possession of the Property under S 33 (1) of the Housing (Scotland) Act 1988.

### **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.**

Petra Hennig-McFatridge

**Petra Hennig-McFatridge**  
**Legal Member/Chair**

**13 November 2018**  
**Date**