

**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/19/1027**

**Re: Property at 1L Willowbank, Burnside, Aberfeldy, PH15 2AU ("the  
Property")**

**Parties:**

**Mr Paul Letley, 3 Windmill Road, St Andrews, KY16 9JJ ("the Applicant")**

**Miss Harriet Pitcaithly-Halsey, Mr Jorge Santos, 1L Willowbank, Burnside,  
Aberfeldy, PH15 2AU ("the Respondent")**

**Tribunal Members:**

**George Clark (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that the application should be granted without a hearing  
and issued an Order for Possession of the Property.**

**Background**

By application, received by the Tribunal on 1 April 2019, the Applicant sought an Order for Possession under Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act").

The application was accompanied by copies of a Short Assured Tenancy Agreement commencing on 1 May 2012 and, if not terminated on 2 November 2012, continuing from month to month until terminated by either party giving to the other two months' written notice, a Form AT5 Notice dated 26 April 2012, a Notice to Quit dated 8 January 2019 and a Section 33 Notice (Form AT6) which was undated, but which, along with the Notice to Quit, had been served by sheriff officer on both Respondents on 10 January 2019. Both Notices required the Respondent to vacate the Property by 15 March 2019. The Respondent, Mr Santos, was one of two named tenants in the Short Assured Tenancy Agreement and the Applicant also provided the Tribunal with a copy of a Minute of Agreement dated 5 and 15 July 2018, to add as a second tenant the Respondent Ms Pitcaithly-Halsey.

On 16 May 2019, The Tribunal advised the Parties of the date, time and place for a Case Management Discussion and the Respondent was invited to make written representations by 5 June 2019. The Respondent made no written representations to the Tribunal.

### **Case Management Discussion**

A Case Management Discussion was held on 20 June 2019, but was continued, as the title to the Property stood in the joint names of the Applicant and his wife, Mrs June Letley and there was no evidence before the Tribunal that Mrs Letley had confirmed to having no objection to the proceedings running in the sole name of the Applicant or alternatively that she wished to be a party to the proceedings. The Minute of Agreement between the Parties also made no reference to Mrs Letley, who, it appeared, would have been a joint landlord. The Tribunal, therefore, required the Applicant to provide confirmation that she was in agreement with the Applicant granting the Minute of Agreement.

The Tribunal also noted that the Respondent had not returned the keys to the Property and that there had been no communication from them since shortly before the date they had been due to vacate the Property in terms of the Notice to Quit, at which point the Respondent, Miss Pitcaithly-Halsey, had advised the Applicant's representative, Miss Horne, that the Respondent's council house would not be ready for a further two weeks. The Tribunal noted from the sheriff officer's report that the Property appeared to be empty and vacant and Miss Horne indicated that she would try to make contact with both Respondents to ascertain their position.

By e-mail dated 1 July 2019, the Applicant's representatives advised the Tribunal that she had been instructed by the Applicant not to contact the Respondents to ascertain their current position.

Prior to the continued Case Management Discussion, the Applicant's representatives provided the Tribunal with a copy letter from the Applicant's wife, confirming that in terms of a Minute of Agreement in 2013, the whole beneficial interest in the Property passed to the Applicant and that she had no interest in the Property so had no difficulty regarding the Minute of Agreement which added the Respondent Miss Pitcaithly-Haley as a tenant.

The continued Case Management Discussion was held at Inveralmond Business Centre, Perth on the afternoon of 29 July 2019. The Applicant was represented by Miss Sheila Horne of CKD Galbraith. The Respondent was not present or represented.

The Applicant's representative asked the Tribunal to grant the Order without a hearing. She told the Tribunal that in her last conversation with the Applicant, Miss Pitcaithly-Halsey had told her that she would contact her again when the Respondent vacated the Property and was in a position to return the keys, but the Respondent had not contacted Miss Horne since then and had not returned the keys of the Property.

### **Reasons for Decision**

By Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision. The Tribunal was satisfied that it had before it all the information it required and that it would determine the application without a hearing.

Section 33 of the 1988 Act provides that the Tribunal shall make an Order for possession of a house let on a Short Assured Tenancy if satisfied that the Short Assured Tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence and that the landlord has given to the tenant notice that he requires possession of the house.

The Tribunal was satisfied that the tenancy had reached its end, that by virtue of service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence and that the Applicant had given the Notice required under Section 33 of the 1988 Act. The requirements of Section 33 of the 1988 Act had, therefore, been met and the Tribunal was bound to grant the Order for Possession of the Property sought by the Applicant..

### **Decision**

The Tribunal determined that the application should be granted without a hearing and made an Order for Possession of 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.**

George Clark

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**Legal Member/Chair**

29 July 2019  
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**Date**