

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/18/1250

Re: Property at M21 Marine Parade Walk, Dundee, DD1 3AU (“the Property”)

Parties:

**Mrs Tina Morgan, c/o Your Move, 31A North Bridge Street, Bathgate, West
Lothian, EH48 4PJ (“the Applicant”)**

**Mr Darren Marshall, M21 Marine Parade Walk, Dundee, DD1 3AU (“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**

Background:

**On 14 June 2018 the Tribunal accepted for determination an application made
on 17 May 2018 by the Applicant(s) through their legal representatives
Thorntons Law LLP Solicitors 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 30 May 2017 as well as a copy of the AT5, the Notice to Quit
dated 12 February 2018 and S 33 Notice dated 12 February 2018 and the Proof
of service of same by Sheriff Officers, which confirmed service 14 February
2018. The bundle also contained the S 11 Notice to the Local Authority under
the Homelessness etc (Scotland) Act 2003.**

**The application and notice of a Case Management Discussion (CMD) fixed for
28 August 2018 was intimated to the Respondent by Sheriff Officers on 27 July**

2018. The CMD was attended by Sarah Matheson from Thorntons Law LLP Solicitors on behalf of the Applicant. The Respondent did not attend.

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 Hearing:

The solicitor explained that she also appeared on behalf of the applicant and of the co-owner of the property David S Morgan, who was supportive of the application having been made in the sole name of the applicant. She further submitted an up to date rent statement and a letter from Mr David S Morgan confirming he had instructed Thorntons Law LLP. She further explained that the tenancy had been entered into from and including 30 May 2017 to and including 29 November 2017 with a month to month continuation.

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. No representations from the Respondents 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 Respondents giving the required 2 months notice in terms of S33 of the Act and the require 40 days notice in the Notice to Quit. Ms Matheson, the solicitor for the Applicants 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. 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 30 May 2017 for a 6 months period with a month to month continuation clause.**
- 2. Notice to Quit was served on the Respondent by Recorded Delivery on 14 February 2018 advising of the termination of the tenancy on the termination date of 30 April 2018**

3. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent by Recorded Delivery on 14 February 2018 advising of the intention to repossess the premises on 30 April 2018
4. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
5. The Respondent had remained in the property at the date of the hearing.

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 Respondent 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.

Petra Hennig McFatridge

Legal Member/Chair

28.8.18

Date