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**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/18/0087**

**Re: Property at 79 Scotstoun Road, Cowie, FK7 7AL (“the Property”)**

**Parties:**

**Mr Jeremy Tucker, 14 King Street, Stirling, FK8 1AY (“the Applicant”)**

**Miss Cyndi McCormick, 79 Scotstoun Road, Cowie, FK7 7AL (“the  
Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that**

**Background**

This is an application dated 4<sup>th</sup> January 2018 brought in terms of Rule 66 (Application for order for possession upon termination of a short assured tenancy) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended.

The Applicant provided with his application copies of the short assured tenancy agreement, form AT5, Notice to Quit, Section 33 notice, and relevant executions of service. There does not appear to have been a formal section 11 notice sent to Stirling Council, albeit that e-mails and correspondence provided with the application indicate the Council are aware of the position and accepted the Respondent as homeless.

The short assured tenancy agreement, dated and executed by the parties on 15<sup>th</sup> June 2014, provides in clause 2 as follows:

"The tenancy shall be from and including 15/06/2014 ("the Commencement Date") to and including 15/12/2014 ("the Expiration Date"), "the Term." The Term of the tenancy is a six months Fixed Term as specified on this page.

Tacit relocation shall not apply to this tenancy and after the expiry of the fixed term and the tenancy shall continue on a monthly basis unless a replacement fixed term tenancy is agreed". (sic)

The Section 33 notice gave notice to the Respondent that the Applicant required vacant possession of the Property "as at 14/12/2017. The tenancy will reach its termination date as at that date and I/we\* NOW GIVE YOU NOTICE THAT YOU ARE REQUIRED TO REMOVE FROM THE PROPERTY ON OR BEFORE 14/12/2017". (sic)

The notice to quit gave the Respondent notice that "you are required to quit the subjects of Lease by the 14/12/2017". (sic)

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 26<sup>th</sup> February 2018, and I was provided with the executions of service.

### **Case Management Discussion**

A Case Management Discussion was held on 27<sup>th</sup> March 2018 at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling. The Applicant did not appear in person, but was represented by Mr Valentine, of Martin & Co, letting agents. The Respondent did appear in person, supported by her mother Mrs Moira McCormick.

I was invited by Mr Valentine with reference to the application and papers to grant the order sought. The Respondent indicated that she was willing to leave the Property, but Stirling Council had not been able to date to provide her with suitable alternative accommodation.

### **Statement of Reasons**

In terms of Section 33 of the Housing (Scotland) Act 1988, the Tribunal shall make an order for possession of the house let on the tenancy if:

- (a) the short assured tenancy has reached its ish;
- (b) tacit relocation is not operating;
- (c) no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
- (d) the landlord has given to the tenant notice stating that he requires possession of the house.

In order for both the notice to quit and section 33 notice to be valid, they must specify an *ish* date for the lease as the date when the tenant is required to quit and remove from the property.

The terms of section 2 of the short assured tenancy agreement make clear that the *ish* date of the lease was 15<sup>th</sup> December 2014, after which date the tenancy

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continues on a monthly basis. That being so, the date of 14<sup>th</sup> December 2017 is not an *ish* date of the lease. It is the 15<sup>th</sup> day of each month after the original term of the lease upon which the *ish* date falls.

That being so, I consider that both the notice to quit and the section 33 notice in this case are invalid. In those circumstances, I must refuse the order sought in this application.

### **Decision**

In these circumstances, I refuse the order for possession of the house let on the tenancy as sought in this 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.

**N Kinnear**

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Legal Member/Chair

27/03/18

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Date