



**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/21/0487**

**Re: Property at 148 St Fillans Road, Dundee, DD3 9LB (“the Property”)**

**Parties:**

**Stephen Mackie, Christine Mackie, The Rowans, Bonnyton Road,  
Auchterhouse, Dundee, DD3 0QT (“the Applicants”)**

**Nadine Keir, 148 St Fillans Road, Dundee, DD3 9LB (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Eileen Shand (Ordinary Member)**

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

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

**Background**

1. This is an application by the Applicants for an order for possession on termination of a short assured tenancy in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The tenancy in question was a Short Assured Tenancy of the Property by the Applicants to the Respondent commencing on 23 June 2016.
2. The application was dated 3 March 2021 and lodged with the Tribunal on that date.
3. The application relied upon a Notice to Quit and notice in terms of section 33 of the Housing (Scotland) Act 1988, both dated 17 August 2020, providing the Respondent with notice (respectively) that the Applicants sought to terminate the Short Assured Tenancy and have the Respondent vacate, each by 23

December 2020. Evidence of service of the said notices by a Sheriff Officer upon the Respondent on 19 August 2020 was included with the application.

4. Evidence of a section 11 notice dated 3 March 2021 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Dundee City Council was provided with the application.

### **The Hearing**

5. On 30 April 2021 at 10:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, we were addressed by the Applicants’ letting agent, David Wilkie, partner of The Property Management Company, Tayport.
6. There was no appearance by the Respondent. The Applicants’ agent stated that no contact had been received from the Respondent since the raising of the application. He explained that there had been little contact from her in general during the Tenancy though his office had met with her at the Property around a year ago when there was also a social worker (coincidentally) present and his office received some update on the Respondent’s home situation. At that time, the Applicants’ agent was told that the Respondent, who had two children that he knew of, had only one child living with her. This information confirmed the Applicants’ agent’s belief that a then-recent reduction in Housing Benefit payments was due to fewer members of the household residing.
7. The Applicants’ agent also told of complaints having been received from neighbours over the last couple of years, such as about the condition of the outside of the Property, where the Applicants’ agent described “rubbish and detritus” lying. Reports from neighbours also suggested the Respondent was not currently living at the Property.
8. Finally, the Applicants’ agent explained that since the raising of the application, a single payment had been received from the Respondent’s account but the Applicants’ agent believed this was a standing order payment that had been set up long ago and paid sporadically as the Respondent’s bank account balance permitted. A further larger payment had been received from Housing Benefit which he understood was a final balancing payment. The local authority had made contact to say that the Respondent no longer resided at the Property and no further payments of Housing Benefit would thus be made. The Applicants’ agent was satisfied that the Property looked unoccupied but the Respondent had not handed back keys, and no access had been taken by the Applicants or their agent pending determination of this application.
9. The clerk confirmed that no contact had been received by the Tribunal from the Respondent. In the circumstances, having waited until 10:07 to start to CMD, we were satisfied to proceed in the absence of the Respondent.
10. The Applicants’ agent confirmed that the application for eviction was still insisted upon. No order for expenses was sought.

## **Findings in Fact**

11. On 23 June 2016, the Applicants let the Property to the Respondent by lease with a start date of 23 June 2016 until 23 December 2016 to “continue thereafter on a periodic basis” (“the Tenancy”).
12. The Tenancy was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988 further to the Applicants issuing the Respondent with a notice under section 32 of the 1988 Act (an “AT5”) on 23 June 2016, prior to commencement of the Tenancy.
13. On 17 August 2020, the Applicants’ agent drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that the Applicants wished her to quit the Property by 23 December 2020.
14. On 17 August 2020, the Applicants’ agent drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the Applicants required possession of the Property by 23 December 2020.
15. 23 December 2020 is an ish date of the Tenancy.
16. On 19 August 2020, a Sheriff Officer acting for the Applicants competently served each of the notices upon the Respondent. The Respondent was thus provided with sufficient notice of the Applicant’s intention that the Tenancy was to terminate on 23 December 2020.
17. On 3 March 2021, the notice period under the notices having expired, the Applicants raised proceedings for an order for possession with the Tribunal, under Rule 66, the grounds of which being that the Tenancy had reached its ish; that tacit relocation was not operating; that no further contractual tenancy was in existence; that notice had been provided that the Applicant required possession of the Property all in terms of section 33 of the 1988 Act; and that it was reasonable to make the order.
18. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Dundee City Council on or around 3 March 2021 on the Applicant’s behalf.
19. On 30 March 2021, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 30 April 2021.
20. The Respondent does not currently occupy the Property as her main or only residence.

## **Reasons for Decision**

21. The application was in terms of rule 66, being an order for possession upon termination of a short assured tenancy. We were satisfied on the basis of the

application and supporting papers that the necessary notices had been served with sufficient notice (in terms of the temporary amendment of the 1988 Act), the Respondent was extending no defence or dispute to the notices, and thus the requirements of the 1988 Act had been complied with.

22. We require, in terms of the 1988 Act as temporarily amended, to consider “that it is reasonable to make an order for possession”. We found in a conjoined application (CV/21/0489) that arrears were owing and the Applicants’ agent described no contact from the Respondent or anyone on her behalf making proposal for payment. Benefits had been an issue but the Applicants’ agent’s submission supported a conclusion that all claims were now resolved but with arrears remaining. The Respondent was said to have alternative accommodation and the Applicants’ agent’s submissions all pointed to the Property being unoccupied and uncared for by the Respondent. We were satisfied that the Applicant’s reasons for seeking eviction were reasonable and we had no information before us to suggest that it was unreasonable to evict the Respondent. In the circumstances as before us, the Respondent has had over ten months notice of the Applicants’ intention and had not sought to voluntarily surrender the Property yet did appear to have vacated it. In all the circumstances before us, we were satisfied that the application was well founded by the Applicants.
23. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. We were thus satisfied to grant an order for possession.

### **Decision**

24. In all the circumstances, we make the decision to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988 in normal terms.

### **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**

**to appeal within 30 days of the date the decision**

30 April 2021

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**Date**