

**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 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/18/1441**

**Re: Property at 10 Charleston View, Cove, Aberdeen, AB12 3QG (“the Property”)**

**Parties:**

**Mr Hing Chin, Mrs Florence Chong, 1 Talwin Street, London, E3 3NF (“the Applicant”)**

**Mr Patrick Idahosa, Mrs Bukola Deji Idahosa, 10 Charleston View, Cove, Aberdeen, AB12 3QG (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member)**

**Decision**

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

**This is an Application for a possession order under section 33 of the Housing (Scotland) Act 1988 made in terms of Rule 66 of the First Tier Tribunal for Scotland Procedure Rules. The Applicants were represented by Mr McLoone Solicitor and the Respondents were represented by Mr Idahosa the first Respondent. The Tribunal had sight of the application, the tenancy agreement, the Form AT5, the Notice to Quit, Notice in terms of S33 of the 1988 Act, e mail correspondence and execution of service of these documents. The Tribunal also had sight of written representations for the Respondents submitted by Mr Idahosa and a letter from Shelter Scotland sent on both Respondents’ behalf.**

**The Hearing/Case Management Discussion**

**On behalf of the Respondents Mr Idahosa sought an adjournment of the case management discussion in order that solicitors assisting him could raise**

Judicial Review proceedings in respect of a decision made by Aberdeen City Council Social Work Department not to give financial assistance to his four children. Mr Idahosa explained to the Tribunal that he and his wife cannot currently work pending a decision by the Home Office on their visa applications and have no financial means at all in order to live but were currently being assisted by the British Red Cross, having been assessed as not being entitled to receive state benefits. This was the reason he explained that he and his wife were unable to pay rent and had not been able to do so for over a year. Although Mr Idahosa was hopeful that judicial review proceedings would be raised very quickly by his solicitor and he believed these would be successful in allowing his children to be financially supported and rent to be paid to the landlord, he could not advise of a date when these proceedings might take place.

The application to postpone was opposed by the Applicant's representative who pointed to the length of time that rent had been unpaid and the nature the Application under s 33 of the 1988 Act in which the Tribunal had no discretion about whether an order should be granted or not if the terms of the section had been complied with. He said the Respondents had "no defence" as such to the application for a possession order. He also pointed to the fact that there was no date by which any application by the Respondents for Judicial Review might take place, Mr Idahosa having simply been informed by solicitors that this could go ahead.

Having regard to all matters including the background set out in the letter from Shelter Scotland and the very difficult circumstances facing the Respondents and their family as set out in detail by Mr Idahosa, the Tribunal was of the view that on balance and despite these circumstances an adjournment was not appropriate. The Tribunal had no information as to when proceedings would be raised and if these would be successful and it appeared that the issue of judicial review of a decision by a local authority to refuse assistance had no bearing on the Application of Section 33 of the Housing (Scotland) Act 1988 in which the Tribunal had no discretion and there was no provision in the Act itself for consideration of the "reasonableness" or otherwise of such an application under the Act. The request for an adjournment was therefore refused.

The Respondents did not dispute that the AT5 had been served, that this was a short assured tenancy, that the Notice to Quit and Notice in terms of section 33 had been served timeously upon them by Sheriff Officer. The Tribunal was satisfied that these documents were in their correct form and had been properly served on the Respondents.

### **Findings In Fact**

The Tribunal was satisfied that the short assured tenancy agreement between the parties had commenced in November 2016 and continued on a month to month basis from November 2017, running from the 17<sup>th</sup> of a month and ending on the 16<sup>th</sup> of each month. The Tribunal was also satisfied that the agreement had been effectively brought to an end by the service of a valid Notice to Quit and Notice in terms of s 33 of the 1988 Act and that tacit relocation was not operating.

## Reasons for Decision

The Tribunal was satisfied that the requirements of section 33 of the Housing (Scotland) Act 1988 had been met in terms of the tenancy being brought to an end by means of the appropriate documentation served on the Respondents timeously and appropriately.

## Decision

The Tribunal made a possession order for the property at 10 Charleston View, Cove, Aberdeen, AB12 3QG in favour of the Applicants.

## 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.

Valerie Bremner

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Legal Member/Chair

3rd September 2018

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Date