



**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 (the 1988 Act)**

**Chamber Ref: FTS/HPC/EV/18/1576**

**Re: Property at 2/3 6 Viewlands Place, Perth, PH1 5AG (“the Property”)**

**Parties:**

**Mr Iain Donaldson, 18 Campsie Road, Perth, PH1 2EG (“the Applicant”)**

**Mr Kevin Kelly, 2/3 6 Viewlands Place, Perth, PH1 5AG (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the applicant.**

**Background**

An application was received on 22 June 2018 under rule 66 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”) seeking recovery of possession of the property under a short assured tenancy by the applicant against the respondent.

The application included: the tenancy agreement; a copy of the form AT5; a copy of the notice required under section 33 of the 1988 Act (“the section 33 notice”); a copy of form AT6; and a copy of the Notice to Quit, together with certificate of service for the Notice to Quit, form AT6 and section 33 notice.

Notice of the case management discussion, together with the application papers and guidance notes, had been served on the respondent by sheriff officers on behalf of the tribunal on 27 August 2018.

## **The Case Management Discussion**

A case management discussion was held on 13 September 2018 at The Inveralmond Business Centre, Auld Bond Road, Perth PH1 3FX. The applicant was represented by Miss Jane McNicol, solicitor of Macnabs Solicitors, Perth. The respondent was not present. No written representations had been received from the respondent.

The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a case management discussion had been duly complied with. It therefore proceeded with the case management discussion in the absence of the respondent.

The tribunal noted that an email had been received from Miss McNicol on 27 August 2018, seeking to amend the applicant's application to amend the address set out on the application form to read 'Viewfield Place' rather than 'Viewlands Place'. The tribunal noted that this request had been made at least 7 working days prior to the date of the case management discussion, and that all of the relevant papers had been served on the respondent at the correct address. The tribunal therefore accepted the amendment.

Miss McNicol on behalf of the applicant referred the tribunal to the papers which had been lodged in support of the application, including the tenancy agreement, form AT5, Notice to Quit, section 33 notice and certificate of service. She submitted that all of the various notices had been validly served, and that the period for removal set out in the Notice to Quit and Section 33 notice had expired, but the respondent had not removed himself from the property. She therefore asked the tribunal to grant an order for possession under section 33 of the 1988 Act.

## **Findings in Fact**

The tribunal made the following findings in fact:

- The applicant is the owner of the property. He is named as 'Ian Donaldson' on the land certificate for the property.
- There was a tenancy in place between the applicant and the respondent. The tenancy commenced on 12 April 2016 for an initial period of 6 months until 13 October 2016. It then continued on a monthly basis thereafter until terminated by either party giving no less than two months' notice to the other party.
- The AT5 form was in the prescribed format and had been signed by the respondent on 24 March 2016. The tenancy agreement had been signed by the respondent on the same date. The tribunal was therefore satisfied that there had been a short assured tenancy in place between the parties.
- Both the Notice to Quit and section 33 notice contained the prescribed information and both were dated 3 April 2018. These notices stated that the applicant required vacant possession of the property on or before 13 June 2018.

- The tenancy therefore reached its end on 13 June 2018.
- There was evidence that the Notice to Quit and section 33 notice had been served by sheriff officer on 4 April 2018, providing more than two months' notice of vacant possession. The tribunal was therefore satisfied that these notices had been validly served on the respondent.

### **Reasons for decision**

Section 33 of the 1988 Act requires the tribunal to grant an order for possession under a short assured tenancy where: the tenancy has reached its end; tacit relocation is not operating; no further contractual tenancy for the time being is in existence; and the landlord has given notice to the tenant that they require possession of the house. The tribunal is satisfied that these requirements have been met. The tribunal is therefore required to grant an order for possession under section 33 of the 1988 Act.

### **Decision**

The tribunal grants an order in favour of the applicant against the respondent for recovery of 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.

**Sarah O'Neill**

Legal Member/Chair

Date

13/9/18