



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/19/1783

Re: Property at 40 Tullis Gardens, Glasgow, G40 1AH (“the Property”)

Parties:

Inglis Property, 25 Gateside Street, Glasgow, G31 1PD (“the Applicant”)

Ms Claire Mooney, 40 Tullis Gardens, Glasgow, G40 1AH (“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 10th June 2019 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 its application copies of the short assured tenancy agreement, form AT5, Notice to Quit, Section 33 notice, Section 11 notice, and relevant executions of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 3rd July 2019, and the Tribunal was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held on 6th August 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Miss Cargill, solicitor. The Respondent did not appear, but was represented by Miss Mair, solicitor.

The Tribunal was invited by Miss Cargill with reference to the application and papers to grant the order sought.

Miss Mair had been contacted by the Respondent and instructed to act on her behalf shortly before this Case Management Discussion, and had not been provided with papers by the Respondent.

In the interests of dealing with the proceedings justly, and ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, the Tribunal arranged for Miss Mair to be provided with duplicate papers, and allowed her time to read and consider those before commencing the Case Management Discussion.

After doing so, Miss Mair asked the Tribunal to adjourn this application to a future date to allow her to properly investigate and prepare in this matter.

Miss Cargill objected to that request, on the basis that the Respondent was served with the notice to quit and section 33 notice on 29th March 2019, and accordingly had plenty of time to prepare her case. She further confirmed that the Applicant wished to sell the Property, and further delaying resolution of this application would be prejudicial to the Applicant, particularly where the ground relied upon for eviction was a mandatory one.

The Tribunal had considerable sympathy for the situation Miss Mair was placed in, but did not consider it would be just to adjourn this matter in the above circumstances at such a late stage, where the Respondent had had substantial advance notice of this Case Management Discussion. However, the Tribunal was prepared to allow Miss Mair time this morning to make enquiries on the legal position, and rose to allow her to do so.

Upon resuming, Miss Mair raised concerns about whether the section 33 notice and the section 11 notice were valid, whether they contained all the information which was required, and whether they were in the correct form.

However, Miss Mair accepted that she was not able to identify to the Tribunal with reference to legal authority any invalidities, any information omitted which was

required, nor in what respects the forms were not in correct form, and as a result was unable to insist on her criticisms.

Miss Mair finally indicated that the Respondent suffers certain serious health problems, and would need about eight weeks to move to alternative accommodation.

Miss Cargill observed that any order granted today could not be enforced until the expiry of 31 days, and that thereafter the likely time-scale until an eviction date could be scheduled would be a further three to four weeks, meaning that the Respondent could not be evicted for at least seven to eight weeks from today's date. She also indicated that if a short period of further time was required by the Respondent to vacate, then the Applicant could be contacted and that matter discussed by the parties.

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 end;
- (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.

All of the above criteria have been satisfied in this application, and accordingly the Tribunal shall make an order for possession.

Decision

In these circumstances, the Tribunal will make an 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

Legal Member/Chair

06/08/19

Date