



**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/19/2042

Re: Property at 28 Dochart Terrace, Dundee, DD2 4EY (“the Property”)

Parties:

Atrix Limited, Resolis, 6 Gladgate, Cupar, KY14 7AY (“the Applicant”)

Mr Philip Roncone, 28 Dochart Terrace, Dundee, DD2 4EY (“the Respondent”)

Tribunal Members:

Ewan Miller (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 possession should be granted in favour of the Applicant against the Respondent in respect of the Property

Background

The Applicant was the owner of the Property. The Applicant alleged that he rented the Property to the Respondent and that the Respondent had failed to remove from the Property upon the lease being terminated. The Applicant applied to the Tribunal seeking an order for possession.

The Tribunal had before it the following documentation:-

- A copy of the Applicant’s application to the Tribunal dated 28 June 2019;
- A copy of the Short Assured Tenancy between the Applicant and the Respondent dated 15 June 2015;
- A copy of the AT5;
- A copy of the Notice to Quit and s33 letter both dated 25 March 2019;
- Sheriff Officer’s certificate of service dated 26 March 2019;
- S11 Homeless Notice;
- A Land Certificate confirming the Applicant as owner of the Property

Case Management Discussion (“CMD”)

The Tribunal held a CMD at Dundee Carer’s Centre on 14 October 2019 at 2pm. The Applicant was not present but was represented by Mr Taylor of Lindsays, Solicitors, Seabraes, Dundee. The Respondent was neither present nor represented.

The Tribunal noted that the papers had been served on the Respondent confirming the date and place of the CMD. The Respondent had been advised that a decision could be made in his absence at a CMD. On that basis, the Tribunal was content that it was appropriate to proceed and make a decision in the absence of the Respondent.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property;
- The Applicant had let the Property to the Respondent under a Short Assured Tenancy dated 15 June 2015;
- The initial lease was until 27 December 2015 and had been continuing on a month to month basis under tacit relocation since then;
- The Applicant had validly and timeously served a Notice to Quit and the required notice under s33 of the Housing (Scotland) Act 1988 on 26 March 2019;
- The lease between the parties had been validly terminated on 27 May 2019;
- The Respondent had failed to remove.

Reasons for the Decision

The Tribunal noted that lease had been validly terminated on 27 May 2019. A valid Notice to Quit and s33 notice had been served. The relevant s11 homelessness notice to the local authority had also been sent. On that basis the Tribunal did not perceive that it had any discretion and it was obliged to grant the application, the application to the Tribunal having been submitted timeously by the Applicant. The Tribunal noted that some sums of rent had been received since the application but the Tribunal was of the view that these were primarily in relation to arrears of rental and were not an acquiescence or acceptance that the lease was continuing following the termination of the lease.

The Tribunal did note that the arrears of rental were very small (c£165) at the date of the CMD and did enquire of Mr Taylor whether his client still wished possession in the circumstances. Mr Taylor confirmed this.

No evidence was presented on behalf of the Respondent to rebut the submissions of the Applicant. The Tribunal had no reason to doubt any of the evidence before it and, on that basis, granted the order for possession.

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.

Ewan Miller

Legal Member/Chair

14/10/2019

Date