



**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/19/2709

Re: Property at 8 2/2 Arbroath Road, Dundee, DD4 6EP (“the Property”)

Parties:

**Mr Brian James Kidd, c/o Pavillion Properties, 86 Bell Street, Dundee, DD1 1HN
 (“the Applicant”)**

**Miss Hazel Ann Robertson, 8 2/2 Arbroath Road, Dundee, DD4 6EP (“the
 Respondent”)**

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
 Tribunal”) determined that the application should be refused.**

Background

1. By application dated 28 August 2019 the Applicant’s representatives Pavillion Properties, 86 Bell Street, Dundee applied to the Tribunal for an order for possession of the property and the ejection of the Respondent. They submitted a copy of the tenancy agreement, Form AT5, Combined Notice to Quit and Section 33 Notice and Section 11 Notice in support of the application.
2. By Notice of Acceptance dated 19 November 2019 a legal member with delegated powers accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management Discussion was sent to the Applicant's representatives by post on 12 December 2019 and was given to the Respondent by Sheriff Officers on 16 December 2019.

The Case Management Discussion

4. A Case Management Discussion was held at Caledonian House Dundee on 17 January 2020. The Applicant did not attend but was represented by Mr Paul Letley and Miss Robyn Dolan of the Applicant's representatives Pavillion Properties. The Respondent did not attend and was not represented. As the Tribunal was satisfied that proper intimation had been given to the Respondent it determined to proceed in her absence.
5. The Tribunal queried with the Applicant's representatives if it was accepted that the tenancy was a Short Assured Tenancy that commenced on 3 May 2017 and endured until 30 November 2017. Mr Letley confirmed that was correct. There was then discussion as to the operation of tacit relocation and it was accepted by the Applicant's representatives that if tacit operation was operating and the duration of the tenancy was for a year or less the tenancy would continue for the original term of the tenancy. It was accepted that in this case that would be 6 months and 27 days and not simply 6 months. It was therefore accepted that the ish date on the combined Notice to Quit and Section 33 Notice had been wrongly calculated. The applicant's representatives accepted that this would invalidate the Notice.
6. Mr Letley explained that the Respondent had accrued several thousand pounds of rent arrears and it would be his intention to serve fresh Notices to gain possession under grounds of rent arrears.
7. The Tribunal queried whether a combined Notice to Quit and Section 33 Notice was an appropriate method of intimation and noted that this was how the Applicant's representatives had dealt with terminations under Section 33 in the past. Mr Letley indicated that it would be just as easy for them to send two separate Notices in the future.
8. Miss Dolan advised the Tribunal that she did not have the recorded delivery slip or confirmation of delivery of the Notice to Quit. The Tribunal pointed out that this was required as proof of delivery.

Findings in Fact

9. The parties entered into a Short Assured Tenancy agreement that commenced on 3 May 2017 and endured until 30 November 2017.
10. The tenancy has continued thereafter by the operation of tacit relocation for the same period as the original term.

11. The Combined Notice to Quit and Section 33 Notice purportedly sent to the Respondent on 25 March 2019 was invalid. As it did not terminate the tenancy on an ish date.

Reasons for Decision

12. The Tribunal was satisfied that the parties had entered into a Short Assured tenancy that endured for a period of 6 months and 27 days. After the initial term of the lease it would have continued for a further term of 6 months and 27 days and then for further terms of the same duration until terminated by the service of a Notice to Quit and a Section 33 Notice in terms of the Housing Scotland Act 1988. Such a notice can only bring a tenancy to an end on its ish. The Applicant's representatives had wrongly calculated that the tenancy had renewed for a period of 6 months from the initial date of termination. By doing so they failed to take account of the additional 27 days duration of the term. As a result the tenancy could not have had an ish on 31 May 2019 which was the date in the combined Notice to Quit and Section 33 Notice. As the ish date was incorrect the tenancy could not be terminated on that date and the Notice was therefore invalid. It therefore followed that the Applicant could not recover possession on the basis of an invalid notice.
13. The Tribunal noted that rather than serving two separate Notices the Applicant's representatives had combined the Notice to Quit and Section 33 Notice into a single Notice. Whilst that might constitute a valid notice the Tribunal did not consider it to be best practice and thought a different Tribunal might take a different view on its validity. In any event as the Applicant's representatives were unable to produce any proof of delivery of the Notice by recorded delivery the tribunal was not satisfied that proper service of the Notice had been given to the Respondent.
14. In light of the combined Notice to Quit and Section 33 Notice being invalid and there being no proof of delivery of the Notice on the Respondent the Tribunal determined to refuse the application.

Decision

15. The Tribunal having considered the application and the documents submitted in support together with the oral submissions made at the Case Management Discussion refuses the 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.

Graham Harding

Legal Member/Chair

Date

17 January 2020

*Insert or Delete as required