



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 32 of the Housing (Scotland) Act 1988.

Chamber Ref: FTS/HPC/EV/18/3449

Re: Property at 91 Wallbrae Road, Cumbernauld, G67 2PD (“the Property”)

Parties:

Mr Ronald Schaefer, 2A Westmount Park, Newtonards, Co Down, BT23 4BP (“the Applicant”)

Ms Jacqueline Cunningham, 91 Wallbrae Road, Cumbernauld, G67 2PD (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. The application for recovery of possession of the Property was received by the Tribunal on 18 December 2018.
2. A Notice of Acceptance of the Application by the Tribunal made under Rule 9 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 as amended (“the Rules”) is dated 20 December 2018.
3. The application type is stated as being made under Rule 66 (Possession on Termination of Short Assured Tenancy).
4. On 11 January 2019 a letter was sent to the Parties intimating the day and time of the Case Management Discussion and providing information on that.
5. On 14 January 2019 Sheriff Officers served a copy of a letter from the Tribunal dated 11 January 2019 on the Respondent together with supporting documentation, specifically drawing her attention to the Case Management Discussion assigned for 30 January 2019 at 2pm in Glasgow Tribunals

Centre, Room 111, 20 York Street, Glasgow G2 8GT which she is required to attend. The mode of service being by way of personal service.

6. The letter itself sets out the details of the application made and invites the Respondent to make written representations to the Tribunal by 28 January 2019; highlights to the Respondent that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing including making a decision on the application which may involve making or refusing an eviction order; and that if she did not attend the Case Management Discussion, this would not stop a decision or order being made by the Tribunal if the Tribunal considers that it has sufficient information before it to do so and the procedure has been fair.
7. No written representations were made by the Respondent.

The Case Management Discussion

8. The Applicant was represented by Mr Ritchie of Hardy MacPhail solicitors.
9. The Respondent was not in attendance. I was satisfied proper intimation of the date and time had been made on the Respondent.
10. The documents lodged in support of the application were examined and discussed.
11. A copy AT5 form had been produced along with a Short-Assured Tenancy Agreement (SAT) between the parties, both of which were dated 4 June 2017. The AT5 having been served prior to the signing of the tenancy agreement. I was satisfied that the tenancy was a Short-Assured tenancy under section 32 of the Housing (Scotland) Act 1988, as amended ("the 1988 Act").
12. The initial term of the SAT was 4 June 2017 to 3 December 2017 and continued in terms of the contract thereafter monthly until such times as it was ended by either party giving two months' notice to terminate it.
13. A Notice to Quit had been served on the Respondent at the instance of the Applicant dated 14 June 2018 and was served by Sheriff Officers on that date. The date of removal was stated as 3 September 2018. I was satisfied that the Notice to Quit was valid.
14. A Notice had also been served on the Respondent at the same time by the Sheriff Officers, called a section 33 Notice under the 1988 Act. I was satisfied it complied with the requirements of section 33 of the 1988 Act.
15. A Notice under section 11 of the Homelessness etc (Scotland) Act 2003 was served by Sheriff Officers for the Applicant on North Lanarkshire Council. I was satisfied notice had been made as required under the legislation.
16. I was asked to grant an order for recovery of possession in favour of the Applicant under section 33 of the 1988 Act, the requirements of section 33(1) having been complied with and an order was required.

Findings in Fact

- I. The parties entered into a Short-Assured Tenancy on 4 June 2017 which continued by tacit relocation thereafter on a monthly basis on 3rd of every month after the expiry of the initial term.

- II. The contractual Short-Assured Tenancy ended on 3 September 2018 by reason of the service by the Applicant of a valid Notice to Quit. Tacit relocation is not operating.
- III. A section 33 Notice was also served by the Applicant under the 1988 Act. It complied with the requirements contained in section 33 of the 1988 Act.

Finding in Fact and law

- IV. The Applicant is entitled to recover possession of the Property from the Respondent.

Reasons for Decision & Decision

The Respondent was not in attendance nor had she made written representations albeit I understood from the Sheriff Officers Report to the Tribunal that her financial circumstances had changed. I was satisfied proper intimation had been made on the Respondent.

The tenancy is a Short-Assured Tenancy in terms of section 32 of the Housing (Scotland) Act 1988, as amended. The Applicant is entitled to recover possession of the Property so long as the requirements of section 33 of the 1988 Act are satisfied. In this application I am satisfied that the documentary evidence produced, in line with the submission, meets the requirements of that section of the Act and therefore I must make an order.

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.

Ms Susan Christie

Legal Member/Chair

30 January 2019

Date