



**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/19/3772

**Re: Property at 140 Hazel Avenue, Culloden, Inverness, IV2 7WS (“the
Property”)**

Parties:

Mr Ian George Maclean, 64 Slackbuie way, Inverness, IV2 6AT (“the Applicant”)

**Mr Alistair Rennie, 140 Hazel Avenue, Culloden, Inverness, IV2 7WS (“the
Respondent”)**

Tribunal Members:

Helen Forbes (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 of the Property should be
granted in favour of the Applicant.**

Background

1. By application dated 22nd November 2019, made in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”), the Applicant applied for an order for possession of the Property in terms of section 33 of the Housing (Scotland) Act 1988 (“the Act”).
2. The Applicant lodged a copy of the tenancy agreement between the parties in respect of the Property. The tenancy commenced on 9th May 2008. The term of the tenancy was 6 months. The Applicant lodged copy Form AT5 dated 8th May 2008, Section 33 Notice and Notice to Quit dated 22nd August 2019, recorded delivery tracking information, and Section 11 notice to the local authority submitted on 22nd November 2019.

3. Service upon the Respondent of notification of the forthcoming Case Management Discussion was effected by Sheriff Officers on 30th December 2019.

The Case Management Discussion

4. A Case Management Discussion ("CMD") took place on 28th January 2020 at Jury's Inn, Millburn Road, Inverness. The Applicant was present and represented by Mr Angus Brown, Solicitor. The Respondent was not present or represented.
5. The Tribunal considered that the Respondent had been given reasonable notification of the date, time and place of the hearing in terms of Rule 24(1). Being so satisfied, the Tribunal considered that the terms of Rule 29 were met and that it was appropriate to proceed with the application upon the representations of the party present and all the material before it.

Preliminary Matters

6. Mr Brown addressed the Tribunal on the fact that the Housing and Property Chamber administration had erred in describing the case as a Rule 65 case. Letters sent to parties had described the case as Rule 65; however, it was clear from the application that it was raised under Rule 66. Mr Brown asked the Tribunal to amend this formally, submitting that the application itself gave sufficient fair notice to the Respondent of the case against him.
7. The Tribunal considered that the application gave fair notice to the Respondent of the case against him and that there was no prejudice to the Respondent in amending this administrative error to show that it was, indeed, a Rule 66 case.

Discussion

8. Mr Brown moved the Tribunal to grant the order as sought. The Respondent had not lodged any defence or made any representations, and this could be taken as an admission of the facts. Mr Brown submitted that the Notice to Quit terminated the tenancy on its ish date and tacit relocation was not now operating. The Notice to Quit and the Section 33 Notice had been signed for by the Respondent. The terms of Section 33 of the Act had been complied with and it was, therefore, mandatory that the Tribunal grant the order. In terms of Rule 18, the Tribunal could determine the proceedings without a hearing.

Findings in Fact

9. (i) The parties entered into a Short Assured Tenancy which commenced on 9th May 2008. The term of the tenancy was 6 months.

(ii) Notice to Quit and Section 33 Notice were served on 22nd August 2019 by Recorded Delivery upon the Respondent. The Notices were signed for and collected by the Respondent on 25th August 2019.

(iii) The Respondent was required to remove from the Property no later than 9th November 2019, which is an ish date of the tenancy. The Notice to Quit is valid and operates to terminate the contractual tenancy. Tacit relocation is not operating.

(iv) The Applicant has complied with Section 33 of the Act.

Reasons for Decision

10. The Tribunal considered that Rule 17(4) allowed it to do anything at a Case Management Discussion that it could do at a hearing, including making a decision. The Tribunal found that the notices required in terms of the Act had been properly served. The contractual tenancy had terminated and tacit relocation was not operating. The Tribunal had no option but to grant the order sought.

Decision

11. The Tribunal grants an order for possession of the Property in favour of the Applicant.

Right of Appeal

12. 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.

H.Forbes

Legal Member/Chair

28th January 2020

Date