

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/3679

Re: 19 Westercrofts, Biggar, South Lanarkshire, ML12 6DX (“the property”)

Parties:

Mr Gary Watkins, 109-111 High Street, Biggar, South Lanarkshire, ML12 6DL (“the applicant”)

Mrs Sandra Harvey, 2 Knockside, Biggar, South Lanarkshire, ML12 6EH (“the respondent”)

Tribunal Member:

Adrian Stalker (Legal Member)

Decision (in absence of the respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the requirements of section 33(1) of the Housing (Scotland) Act 1988 were met, and therefore, the Tribunal granted an order for recovery of possession of the property in favour of the applicants.

Background

1. In July 2013, the applicant let the property to the respondent, under a short assured tenancy. The parties entered into a written tenancy agreement. This states, in clause 1, that the tenancy is to run “from 10/07/2013 to 10/01/04...The Lease may continue from month to month thereafter...either party shall be entitled to terminate the tenancy on the 10th day of any month thereafter on giving written notice to the other party not less than one calendar month prior to the date of termination.” The tenancy agreement was executed on 10 July 2013.

2. By an application received by the Tribunal on 14 November 2019, the applicant sought an order for recovery of possession under section 33 of the Housing (Scotland) Act 1988 (“the Act”),

3. On 29 November 2019, notice of acceptance was granted by a legal member. A Case Management Discussion (“CMD”) was fixed. On 20 December, the applicant notified the Tribunal that the respondent had left the property, and was now residing at 2 Knockside, Biggar. The application was intimated to the respondent, along with intimation of the CMD, by letter to that address dated 20 December 2019.

4. The property is jointly owned by the applicant and his wife, Lorraine Watkins. However, only the applicant is named as the landlord in the tenancy agreement. By email dated 3 December, Mrs Watkins confirmed that the applicant had her authority to act on her behalf in relation to the application.

The CMD

5. The CMD took place at 2pm on 22 January 2020, at Moffat Town Hall, High Street, Moffat. The applicant appeared. The Respondent did not appear, and was not represented. She had not made any representations to the Tribunal, in advance of the CMD.

6. Under rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, the First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision. The applicant asked the Tribunal to grant an order for recovery of possession, under section 33 of the Act.

Findings in fact, and in fact and law; reasons for decision

7. Along with the application, the applicants had produced copies of: the tenancy agreement; a notice to quit; a section 33(1)(d) notice and a notice to the local authority (under section 11 of the Homelessness etc. (Scotland) Act 2003), sent by email to South Lanarkshire Council on 7 January 2019. The notice to quit and section 33(1)(d) notice were both dated 28 August 2019. They were sent together. A Royal Mail Proof of Delivery receipt was produced, confirming that the relative postal item was signed for by “Harvey” on 6 September 2019. A copy email of 19 November from the council, acknowledging receipt of the section 11 notice, was also produced.

8. The Tribunal was satisfied that these notices were in order. In particular, the notice to quit contained the requisite information, and bore to take effect on 10 November 2019, an ish of the tenancy, which was more than two months after service of the notice to quit was effected. The notice under section 33(1)(d)

confirmed that the applicants required possession of the property on 10 November 2019, more than 2 months after service of the notice was effected. The applicant confirmed that there was no other contractual tenancy in existence.

9. Accordingly, the Tribunal was satisfied that: (a) the parties' tenancy had reached its end; (b) the tenancy had been terminated on 10 November 2019 and tacit relocation was not operating; (c) there was no other contractual tenancy between the parties in existence; (d) notice had been given under section 33(1)(d) of the Act; (e) notice had also been given to the local authority under section 19A of the Act.

10. The requirements for an order for possession under section 33(1) are met. Accordingly, the Tribunal is required to grant an order for possession under that provision.

Decision

11. The Tribunal accordingly granted an order for possession under section 33 of the 1988 Act.

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.

A Stalker

Legal Member

22/1/20.

Date