



**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/19/3410

Re: Property at 90 Abercrombie Crescent, Bargeddie, G69 7PN (“the Property”)

Parties:

Mr Robert Mooney, 26 Harvey Way, Bellshill, ML4 1TF (“the Applicant”)

Miss Kerrie Lee Baird, 90 Abercrombie Crescent, Bargeddie, G69 7PN (“the Respondent”)

Tribunal Members:

Andrew Upton (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 against the Respondent in favour of the Applicant.

FINDINGS IN FACT

1. The Applicant was the landlord, and the Respondent the tenant, of the Property under and in terms of a Short Assured Tenancy which commenced in late 2015 and was extended and varied by agreement of the parties with effect from 17 October 2018.
2. Notice to Quit was given personally by the Applicant to the Respondent on 20 October 2018.
3. Notice in terms of section 33(1)(d) of the Housing (Scotland) Act 1988 was given by the Applicant to the Respondent on 16 August 2019 by depositing the said notice through the letterbox of the Property.

FINDINGS IN FACT AND LAW

1. The tenancy between the parties was a Short Assured Tenancy.
2. The tenancy reached its ish as at 17 October 2019.
3. Tacit relocation is not operating.
4. The requirements of section 33(1) of the Housing (Scotland) Act 1988 have been satisfied.

STATEMENT OF REASONS

1. This application called before me for a Case Management Discussion on 7 January 2020. The Applicant was personally present, together with his representative, Ms McDonald. The Respondent was neither present nor represented.
2. This application seeks the grant of an order for possession of a property let on a Short Assured Tenancy. As such, it proceeds under section 33 of the Housing (Scotland) Act 1988, which provides as follows:-

“33.— Recovery of possession on termination of a short assured tenancy.

- (1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied—
 - (a) that the short assured tenancy has reached its ish;
 - (b) that tacit relocation is not operating; and
 - (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.
- (2) The period of notice to be given under subsection (1)(d) above shall be—
 - (i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;
 - (ii) in any other case, two months.
- (3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

- (4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that time shall end (without further notice) on the day on which the order takes effect.
- (5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”
3. I was invited by Ms McDonald to grant the order for possession as sought in the application.
 4. The application states that the tenancy in this case is a Short Assured Tenancy. A copy of a form AT5 dated October 2015 was produced, together with a Short Assured Tenancy Agreement dated May 2016 and a further Short Assured Tenancy Agreement dated October 2018. Ms McDonald explained that the original tenancy agreement began in late 2015. The AT5 related to that original agreement. Thereafter, the 2018 tenancy agreement was an extension and variation of the existing Short Assured Tenancy Agreement. In particular, the parties had agreed an increased rent and the 2018 Agreement reflected that, together with a further fixed period of occupation for the contractual tenancy. I am satisfied that the 2018 Agreement was an extension and variation of the existing tenancy, and was not the creation of a new tenancy under new legislation.
 5. A notice to quit dated 20 October 2018 was produced in support of the application. It was asserted in the application that this was given to the Respondent. The Respondent has not challenged that assertion. I was told by Ms McDonald that the notice to quit was given personally to the Respondent by the Applicant.
 6. A notice under section 33(1)(d) of the Housing (Scotland) Act 1988 dated 16 August 2019 was produced in support of the application. It was asserted in the application that this was given to the Respondent. The Respondent has not challenged that assertion. I was told by Ms McDonald that the section 33(1)(d) notice was given to the Respondent by the Applicant by hand delivery through the letterbox of the property. There are photographs lodged with the application showing an envelope addressed to the Respondent, and a man posting the said envelope through the door of a property. I was told that these photographs were of the section 33(1)(d) notice being hand delivered.
 7. The Respondent has been given an opportunity to challenge the assertions made in the application and oppose the grant of the order sought. She has chosen not to avail herself of that opportunity. I therefore consider that the order sought is not opposed, and the assertions in support of it unchallenged.

8. I am therefore satisfied that the Applicant was the landlord, and the Respondent the tenant, of the Property under and in terms of a Short Assured Tenancy that commenced in late 2015. That tenancy was extended and varied by the agreement dated October 2018 produced with the application. The contractual tenancy was brought to an end at its ish on 18 October 2019 by the giving by the Applicant to the Respondent of the Notice to Quit dated 20 October 2018. Tacit relocation is not operating. Notice in terms of section 33(1)(d) was given by the Applicant to the Respondent on 16 August 2019, which provided a period of notice in excess of 2 months as required by section 33(2). The period of notice has expired. That being so, the requirements of section 33 of the 1988 Act are satisfied. I have no discretion, and must grant the order sought.

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 Upton

Legal Member/Chair

7 JANUARY 2020

Date