

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 (hereinafter referred to as “the 1988 Act”) for Recovery of Possession of a short assured tenancy

Chamber Ref: FTS/HPC/EV/18/0046

Re: Property at 2 North Calder Drive, Airdrie, ML6 8BY (“the Property”)

Parties:

Benedict Nevo, 52 Calder Park Road, Uddingston, Glasgow, G71 7RH (“the Applicant”)

Amanda Bryce, 2 North Calder Drive, Airdrie, ML6 8BY (“the Respondent”)

Tribunal Members:

**Karen Kirk (Legal Member)
Gordon Laurie (Ordinary Member)**

This Hearing was fixed in terms of Rule 24 and 65 of the Procedure Rules and concerned an Application for Recovery of Possession under Section 18(1) of the Housing (Scotland) Act 1988. The purpose of the hearing was explained in terms of Rule 25 of the Procedure Rules.

Attendance and Representation

The Applicant was personally present.

The Applicant was represented by his wife Loveth Nevo, 52 Calder Park Road, Uddingston, Glasgow, G71 7RH.

The Respondent was not present.

Preliminary Matters

The Respondent did not appear nor was she represented. No written representations had been lodged by the Respondent. The Tribunal was

satisfied that in terms of Rule 29 of the Procedure Rules the Respondent had been given the relevant notice of the hearing in terms of Rule 24(1) of the Procedure Rules and proceeded with the Hearing accordingly.

The Application proceeded as a Rule 66, Section 33 Application. However the pack and Application also refers to a lodged AT6 and Ground 8 application. The Applicant confirmed they were proceeding in terms of section 33 only. The Tribunal accepted this and noted that in terms of the rules in particular Rule 24 no new issue arose. The Tribunal proceeded on a section 33 application only.

The Tribunal noted that there was no proof of service of the Notice to Quit dated 23rd August 2017. The Tribunal allowed the Applicant and his representative an adjournment to clarify service with the letting agents, Your Move. Following the Adjournment the Applicant lodged a Royal Mail track and trace confirmation of service stating that the Notice had been delivered and signed for by the Respondent on the 24th August 2017. In addition the Applicant lodged an email from Your Move confirming the said track and trace related to said Notice to Quit dated 23rd August 2017. The Tribunal considered in terms of Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 service by recorded delivery was sufficient. The Tribunal allowed the said proof of service to be lodged.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

Reasons for Decision

1. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property.
2. The Tribunal was satisfied that the tenancy was in terms of Section 32(1) of the 1988 Act, a short assured tenancy for not less than 6 months and in relation to which a prescribed notice namely a valid AT5 had been served before creation of the short assured tenancy.
3. In terms of Section 33 of the 1988 Act the Tribunal considered that the Short Assured Tenancy had reached its end.
4. Further the Tribunal was satisfied that no tacit relocation was operating, no further contractual tenancy was in existence and a valid Notice to Quit had been served on the Respondent terminating the tenancy with the necessary notice given to the Respondent. The Tribunal noted in particular the proof of service lodged at the Tribunal and was satisfied with same.
5. Accordingly in terms of Section 33 of the 1988 Act the Tribunal granted an order against the Respondent for possession of the Property.

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.

K Kirk

Legal Member/Chair

19/6/18

Date