



**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/19/2894

**Re: Property at Flat B, 28 Church Street, Lochwinnoch, Renfrewshire, PA12
4AD (“the Property”)**

Parties:

**Mr Christopher Lithgow, Mrs Janet Helen Lithgow, Auchenfoyle Farm,
Kilmacolm, PA13 4TH (“the Applicant”)**

**Ms Linda Watt, Flat B, 28 Church Street, Lochwinnoch, Renfrewshire, PA12
4AD (“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 16 September 2019.
2. The 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 10 October 2019.
3. The application type is made under Rule 66 of the Rules.

The Case Management Discussion (CMD) on 20 November 2019

4. On 18 October 2019 a letter was sent to the Parties intimating the day and time of the first Case Management Discussion and providing accompanying information.
5. On 21 October 2019 Sheriff Officers served a copy of the letter from the Tribunal dated 18 October 2019 on the Respondent, specifically drawing her attention to the Case Management Discussion assigned for 20 November 2019 at 10am in Glasgow Tribunals Centre, Room 109, 20 York Street, Glasgow G2 8GT to which she is required to attend. The mode of service being by way of letterbox 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 8 November 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 either or both 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. Written representations (revised) were lodged by the Respondent by e mail on 18 November 2019. These were crossed over to the Applicant's Representative despite being lodged late.
8. The Respondent indicated in addition via the Caseworker that she was unable to attend the Hearing.
9. The Applicant was represented by Ms Caldwell, agency solicitor.
10. The Respondent was not in attendance. I was satisfied proper intimation of the date and time had been made on the Respondent.
11. The documents lodged in support of the application were examined and discussed.
12. An AT5 form had been produced along with a Short-Assured Tenancy Rental Agreement between the Parties. The AT5 was dated 1 March 2014. The agreement stated that an AT5 had been served prior to the signing of the tenancy agreement as acknowledged by the Respondent's signature on the Rental Agreement. For completeness, a copy of the second page AT5 was to be produced prior to the second CMD Hearing.
13. The initial term of the SAT was 6 March 2014 for 6 months and continued in terms of the contract thereafter by tacit relocation until such times as it is ended by either party giving two months' notice to terminate it.
14. The rent being £600 per calendar month.
15. A Notice to Quit and Section 33 Notice and evidence of service were produced along with the application.
16. A Notice under section 11 of the Homelessness etc (Scotland) Act 2003 was produced. Evidence of service was produced by way of an e mail acknowledgement.
17. The Applicant is seeking an order for recovery of possession under section 33 of the 1988 Act and states that any matters raised by the Respondent in the written response do not require to be considered, as there is no reasonableness defence under that section of the Act.

18. As the Applicant is seeking an order for recovery of possession under section 33 of the 1988 Act, I am required in terms of the Act to grant an order for recovery of possession if the requirements of Sections 32 and 33 of the Act are met.
19. A further CMD hearing was assigned to take place with any additional or substitute copy documents to be lodged and crossed over and lodged timeously. This was to ensure that the procedure is fair and all relevant information provided is considered by the Tribunal. It also allowed both Parties to be in attendance to make representations on the application for an order for recovery of possession if they wished to do so.

The Case Management Discussion on 11 December 2019

20. On 26 November 2019 intimation was made to the Parties intimating the day and time of the second Case Management Discussion and providing accompanying information specifically drawing their attention to the Case Management Discussion assigned for 11 December 2019 at 10am in Glasgow Tribunals Centre, Room 109, 20 York Street, Glasgow G2 8GT to which they are required to attend.
21. The Parties having been advised 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 either or both 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.
22. The Applicant was represented by Ms Caldwell, agency solicitor.
23. The Respondent was not in attendance. I was satisfied proper intimation of the date and time had been made on the Respondent and that the procedure was fair to proceed in her absence.
24. On 4 December 2019 the Applicants' Representative had e mailed the Tribunal and copied the Respondent into the e mail. He said that he was informing the Tribunal of an agreed position that the Respondent had agreed to consent to an Order for recovery of possession on the basis of an undertaking that no steps would be taken to recover possession of the Property prior to 8 January 2020. The Respondent had been asked by the Applicant to send an e mail to the Tribunal to confirm this.
25. No response was received by the Tribunal from the Respondent. Ms Caldwell confirmed verbally that the communications between the Applicants' Representative and the Respondent beforehand had been by e mail which had resulted in what they had believed to be an agreed position.
26. I noted that in the revised Written Representations by the Respondent she had stated she had secured temporary accommodation beginning January 2020 and was at that time awaiting a move in date to be confirmed.

27. The documents lodged in support of the application were further examined and discussed. I was satisfied that all documents were in order to allow me to consider the application under Section 33 of the Act today.
28. An AT5 form had been produced along with a Short-Assured Tenancy Rental Agreement between the Parties, a valid Notice to Quit and valid Section 33 Notice and evidence of service.
29. A Notice under section 11 of the Homelessness etc (Scotland) Act 2003 was produced along with evidence of service by way of an e mail acknowledgement.
30. The Applicant is seeking an order for recovery of possession under section 33 of the 1988 Act.

Findings in Fact

- I. The Parties entered into a Short Assured Tenancy with an initial term of 6 months from 6 March 2014 and continued in terms of the contract thereafter by tacit relocation until such times as it was ended by either party giving two months' notice to terminate it.
- II. A valid Notice to Quit and valid Section 33 Notice and evidence of service were produced along with the application.
- III. A Notice under section 11 of the Homelessness etc (Scotland) Act 2003 was produced with evidence of service on the local authority.
- IV. The short assured tenancy has reached its finish
- V. Tacit relocation is not operating
- VI. The Applicant has given to the Respondent notice stating that they require possession of the house.
- VII. The First-tier Tribunal makes an order for possession of the Property in favour of the Applicant.

Decision and Reasons for Decision

31. I considered the following sections 32 and 33 of the Act and in particular:
'Section 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 finish;
- (b) that tacit relocation is not operating; and
- (c)

(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.'

32. I was satisfied that the requirements contained in the Act had been met in this case and as such I am required to grant the 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.


Legal Member/Chair

11 December 2019
Date