



**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/18/3319

Re: Property at 2 Deas Wharf, Kirkcaldy, Fife, KY1 1JJ (“the Property”)

Parties:

**Brammeld & Simpson, Brammeld & Simpson, PO Box 26772, Kirkcaldy, Fife,
KY1 1ZF (“the Applicant”)**

**Mr Irfan Arshad, Mrs Sehar Arshad, 2 Deas Wharf, Kirkcaldy, Fife, KY1 1JJ
 (“the Respondents”)**

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for possession of the property and the ejection of the Respondents from the property.

Background

1. By application dated 10 December 2018 the applicants applied to the Tribunal for an order for possession of the property under Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 on the basis that the Short Assured Tenancy Agreement between the parties was at an end. In support of their application the Applicants provided the Tribunal with a copy of the tenancy agreement, Form AT5, Notice to Quit, Section 33 Notice, Certificate of Intimation by Sheriff Officer and Section 11 Notice.
2. By Notice of Acceptance dated 24 December 2018 a legal member of the Tribunal with delegated powers accepted the application and a Case Management discussion was assigned.

3. Intimation of the Case Management Discussion was given to the Applicants by post and to the Respondents by Sheriff Officers.

Case Management Discussion

4. Both parties attended the Case Management Discussion which was held on 29 January 2019 at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy.
5. The Respondents accepted that they had been given a Form AT5 prior to the commencement of the tenancy and the acknowledgement of receipt had been signed by Mrs Arshad. The Respondents agreed that the Short Assured Tenancy commenced on 15 September 2017 and had continued until 16 March 2018 and then on a month to month basis thereafter. The Respondents also accepted that they had received service of the Notice to Quit and Section 33 Notice in September 2018.
6. Mr Arshad explained that due to having a car accident in February 2018 in which his car had been written off he had to buy another car. He had as a result experienced some financial difficulties that had been made worse by becoming unemployed through having health issues. Housing benefit had not covered all of the rental payments and rent arrears had built up. Mr Arshad confirmed there was no outstanding application for Housing Benefit. Mr Arshad explained that following the service of the Notice to Quit in September he had reached an agreement with the applicants that the eviction would not go ahead. He explained he had been successful in applying for a taxi drivers licence in Edinburgh and as a result he would be able to pay off all the rent arrears in a matter of about six weeks.
7. For the Applicants Mr Brammeld explained that there had been a history over many months of rent not being fully paid and there was currently about £1900.00 of rent arrears. It was anticipated that housing Benefit of about £300.00 would be paid on 31 January reducing the balance due to about £1600.00. It was the Applicants' position that there had been a number of promises by Mr Arshad in the past to clear the arrears but none of these had happened therefore the Applicants wished to obtain an order for possession and ejection.
8. The Tribunal chairman explained to the Respondents that as there was a Short Assured Tenancy agreement in place the applicants on serving the correct documents were entitled to the order sought and it did not matter that the Respondents were in arrears of rent or not . The Applicants had not brought the application on the basis of arrears of rent but on the basis that the Short assured Tenancy was at an end.
9. Mr Arshad asked if it was possible to reach a private agreement with the applicants and it was explained to him that if the order was granted it would not come into force for at least 30 days. It would be a matter for the parties as to whether some agreement could be reached or not but even if the rent

arrears were cleared that would not prevent an order being enforced. Mr Arshad said that he understood that this was the case.

Findings in Fact

10. The parties entered into a Short Assured Tenancy Agreement that commenced on 15 September 2017 and ended on 16 March 2018 and continued on a month to month basis thereafter until terminated by either party giving two months' notice.
11. The Applicants served a Notice to Quit and Section 33 Notice on the Respondents by Sheriff Officers on 14 September 2018.
12. The Termination date of the tenancy was 16 December 2018.
13. The Respondents remain in the property.
14. The Applicants sent a Section 11 Notice to Fife council intimating the raising of proceedings.
15. The Applicants have complied with the requirements of Section 33 of the Housing (Scotland) Act 1988 to bring the tenancy to an end.

Reasons for Decision

16. There was no dispute between the parties with regards to the constitution of the Short Assured Tenancy or to the service of the Notice to Quit, Section 33 Notice or Section 11 Notice. The Tribunal was therefore satisfied that all the statutory requirement for granting an order for possession had been met.
17. It was not relevant to the application whether there were rent arrears or not. The applicants were not seeking possession on the basis of any rent arrears. Therefore it was not relevant to the defence of the application that the Respondents might be in a position to clear the arrears within a short period of time.
18. The statutory requirements having been met and there being no outstanding application for Housing Benefit the Applicants were entitled to the order sought.

Decision

19. The applicants are entitled to an order for possession of the property and for ejection of the Respondents from 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.

Graham Harding

Legal Member/Chair

29 January 2019
Date