



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/19/3129

Re: Property at 26 McLaren Court, Hawick, TD9 8HN (“the Property”)

Parties:

Miss Gillian Parker, c/o 1 North Bridge Street, Hawick, TD9 9BD (“the Applicant”)

represented by Charlene Kewin, Catford Investments Ltd 1 North Bridge Street, Hawick TD9 9BD

Miss Angela Sarginson-Tomaszewski, 26 McLaren Court, Hawick, TD9 8HN (“the Respondent”)

Tribunal Members:

David Bartos (Legal Member)

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) orders the Respondent to remove herself from and to give up possession of the Property in favour of the Applicant.

Summary of Discussion

- 1. The Applicant seeks recovery of possession of the Property and removal of the Respondent from it.**
- 2. The Applicant was represented by Charlene Kewin of Catford Investments at the case management discussion on 9 December 2019 at 14.00 hrs. The discussion took place on the second floor at the Heart of Hawick Tower Mill, Kirkstile, Hawick TD9 0AE. There was no appearance by or on behalf of the Respondent. The Tribunal noted that notification**

of the case management discussion had been given to the Respondent in a letter from the Tribunal dated 7 November 2019 which had been served on her by sheriff officers on 9 November 2019. No explanation had been given by the Respondent for her non-attendance at the discussion. The Applicant's representative confirmed that the Respondent had not contacted her about the case management discussion. In all the circumstances the Tribunal was satisfied that the Respondent had been given sufficient opportunity to participate in the discussion. No written representations had been received by the Tribunal from the Respondent.

Findings in Fact

3. The following facts were not in dispute between the parties:

- (i) The Applicant is owner of the Property under title number ROX7640. The Respondent entered into a short assured tenancy of the Property with Applicant dated 27 February 2017. The Respondent received the AT5 Form before entering into the tenancy.
- (ii) Following its ish (expiry date) on 26 August 2017 the tenancy had become a month long short assured tenancy with new ishes being the 26th day of each month.
- (iii) The Notice to Quit dated 30 May 2019 from Catford Investments addressed to the Respondent required the Respondent to remove from the Property by 27 August 2019. It was served on the Respondent on 5 June 2019 by sheriff officers.
- (iv) On 5 June 2019 the Respondent also received a notice from Applicant's letting agents Catford Investments Limited given on behalf of the Applicant given under section 33(1) of the 1988 Act. It was also served by sheriff officers on the Respondent on 5 June 2019. The notice was dated 30 May 2018. It required the Respondent to remove from the Property on or before 27 August 2019.
- (v) No further contractual tenancy has been entered into between the parties.
- (vi) A notice under section 11 of the Homelessness etc (Scotland) Act 2003 had been served on behalf of the Applicant on Scottish Borders Council.

4. The Applicant's representative submitted that the requirements of section 33(1) of the 1988 Act had been satisfied. The notices necessary by virtue of section 33(1) had been served on the Respondent. She told the Tribunal that the Respondent had allowed overcrowding of the

Property. She also said that the Respondent had received assistance from homelessness services. She requested an order for possession.

5. The Tribunal considered the application form, the oral submission of the Applicant's representative and the documentary evidence submitted by the Applicant's representative. It found that it was able to make sufficient findings in fact and that to do so was not contrary to the interests of the parties. It was therefore able to decide the case without a hearing.
6. The Tribunal was satisfied that evidence had been produced to support the findings in fact set out above. No doubt was cast on that evidence. There was a short assured tenancy of the Property between the parties. The terms of the notice to quit and the section 33 notice satisfied the requirements of the common law, section 112 of the Rent (Scotland) Act 1984 and section 33 of the 1988 Act respectively.
7. While the notice to quit required removal on 27 August 2019 which one day after the ish (termination) of the tenancy, there was no prejudice to the Respondent in being required to remove a day after the legal expiry of the tenancy, that being 26 August 2019. The notice to quit was therefore valid. Tacit relocation (automatic re-lease) was no longer operating.
8. In those circumstances the Tribunal found that section 33(1) of the 1988 Act had been complied with and that it had no discretion but to grant the order sought without continuation to a further hearing. It could see no benefit to be gained from a further hearing which would cause further delay.

Outcome

The First-tier Tribunal for Scotland (Housing and Property Chamber) made the decision stated above.

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.

 9 December 2019