

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

Chamber Ref: FTS/HPC/EV/19/3426

Property: Flat 1 /2, 159 Carnwadric Road, Glasgow G46 8EP ("Property")

Parties:

Michael Shebson, c/o Blair & Bryden, Solicitors, 20A Union Street, Greenock PA16 8JL ("Applicant")

Blair & Bryden, Solicitors, 20A Union Street, Greenock PA16 8JL ("Applicant's Representative")

John Murtagh and Donna Lehane, Flat 1 /2, 159 Carnwadric Road, Glasgow G46 8EP ("Respondents")

Tribunal Members:

Joan Devine (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined that an order for possession of the Property should be made.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Short Assured Tenancy Agreement signed by the Applicant and the First Respondent dated 13 March 2013; Notice signed by the Applicant under section 32 of the Housing (Scotland) Act 1988 ("1988 Act") dated 13 March 2013 ("AT5"); Notices to Quit dated 23 July 2019 addressed to each Respondent; Notice to each Respondent under section 19 of the 1988 Act dated 23 July 2019 ("AT6"); Sheriff Officer's execution of service evidencing service on the Respondents of the Notices to Quit and the AT6 on 25 July 2019; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 sent on 24 October 2019 and certificate of service by Sheriff Officer evidencing

service of a letter from the First-tier Tribunal enclosing a full set of papers on the Respondents on 2 December 2019.

Case Management Discussion ("CMD")

A CMD took place on 9 January 2020 at 11.30am at the Glasgow Tribunals Centre. The Applicant was represented by Peter Harvey of the Applicant's Representative. There was no appearance on behalf of the Respondents. Mr Harvey told the Tribunal that although the Second Respondent had not signed the tenancy agreement she had been in occupation of the Property and was a joint tenant. He also told the Tribunal that the AT5 had been signed by the Applicant.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondents had entered into a tenancy agreement dated 13 March 2013.
2. The Applicant had signed the form AT5 on 13 March 2013.
3. The tenancy commenced on 13 March 2013 and was stated to be for the period from 13 March to 14 September 2003 and month to month thereafter.
4. A Notice to Quit and AT6 both dated 23 July 2019 were served on the Respondents on 25 July 2019.
5. The Notice to Quit stated that it was providing notice for each Respondent to quit the Property by 14 October 2019.
6. The AT6 stated in a paper apart that possession of the Property was sought as the tenancy had been terminated at its expiry date . The paper apart stated that this was in terms of section 33 of the 1988 Act.
7. The Notice to Quit and AT6 were served more than 2 months prior to the ish of 14 October 2019.
8. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.
9. Notice of the date of the hearing had been given to the Respondent on 2 December 2019.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act. The Tribunal noted that the tenancy had been properly created as a short assured tenancy. The Tribunal further noted that a Notice to Quit had been served on the Respondents bringing the tenancy to an end on 14 October 2019.

The Applicant had not served a separate notice in terms of section 33 of the 1988 Act. The Applicant had served the AT6 in terms of section 18 of the 1988 Act. The AT6 narrated the ground for seeking possession of the Property was that the tenancy had been terminated at its expiry in terms of section 33 of the 1988 Act. That is not a ground for possession in terms of schedule 5 to the 1988 Act.

The Tribunal considered whether the cumulative effect of the Notice to Quit and the wording of the AT6 was sufficient to amount to notice having been given in terms of section 33 of the 1988 Act.

In terms of section 33 of the 1988 Act an order for possession shall be made if the Tribunal is satisfied -

- (a) That the short assured tenancy has reached its end;
- (b) That tacit relocation is not operating;
- (c) That no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence' 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.

Section 33 (2) of the 1988 Act provides that the period of notice to be given under section 33 (1) (d) is two months.

The Tribunal was satisfied that the requirements of paragraphs (a), (b) and (c) of section 33(1) of the 1988 Act had been met. There is no form of notice prescribed in terms of section 33 (1)(d). Having considered the case of *Key Housing Association Ltd v Cameron* 1999 Hous LR 47 the Tribunal determined that the wording of the Notice to Quit and the AT6 served were sufficient to allow the Tribunal to grant an order for possession in terms of section 33 of the 1988 Act.

In all of the circumstances, it was appropriate for an Order to be made.

Decision

The Tribunal grants an Order 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.

Joan Devine

09/01/2020

Legal Member

Date