



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/22/2245

Re: Property at 5 Valgreen Court, Dundee, DD4 8XL ("the Property")

Parties:

Wingman Ventures Limited, 165 Brook Street, Dundee, DD5 1DJ ("the Applicant")

Mr George Thompson and Mrs Lynsey Thompson, 5 Valgreen Court, Dundee, DD4 8XL ("the Respondents")

Tribunal Members:

Gillian Buchanan (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the First Respondent)

At the Case Management Discussion ("CMD"), which took place by telephone conference on 11 January 2023, the Applicant was represented by Mr Jay Lawson of MML Legal. The Second Respondent was in attendance and was represented by Mr Kenneth Marshall of Dundee Law Centre. The First Respondent was neither present nor represented and had lodged no written representations.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the First Respondent having received notice of the CMD and determined to proceed in the absence of the First Respondent in terms of Rule 29.

Prior to the CMD the Tribunal had received the following:-

- i. By email dated 9 December 2022, written representations for the Second Respondent; and
- ii. By email dated 4 January 2023, written representations for the Applicant.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

- i. The Applicant is the heritable proprietor of the Property having purchased the Property from Graeme Robert Carling and Leanne Carling on 20 September 2021.
- ii. That the Applicant is in right of the Landlord's interest in a Short Assured Tenancy ("the SAT") of the Property.
- iii. The Respondents are the Tenants under the SAT.
- iv. The SAT was entered into on 30 June and 26 July 2017.
- v. The SAT commenced on 19 May 2017 for the period to 18 May 2018 and continued monthly thereafter.
- vi. On 13 April 2022, the Applicant's agent, Your Move, purported to serve on the Respondents a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988. The Notices were issued by Royal Mail "Signed For" post and were signed for on 14 April 2022. The Notices sought the Respondents removal from the Property by 18 June 2022.

The CMD

At the outset of the CMD the Tribunal drew to Mr Lawson's attention that the Section 33 Notice had been issued with the heading "Landlord(s): Mrs Leanne Carling", and the definition of "Landlord" throughout that Notice therefore referred to Mrs Leanne Carling. However, at the time of the Section 33 Notice being issued, Mrs Carling was no longer the (joint) heritable proprietor of the Property having previously sold the Property to the Applicant on 20 September 2021.

The Tribunal intimated that the Section 33 Notice was invalid and that no Section 33 Notice had therefore been issued by the Applicant, being in right of the Landlord's interest in the SAT, to form the basis for the application for the eviction order relative to the Property. The Tribunal intimated that the error in the Notice was not capable of being corrected.

In the event Mr Lawson agreed with the Tribunal.

The Tribunal therefore refused the application.

Decision

The application for an eviction order relative to the Property is refused.

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 January 2023
Date