



**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/20/0562

Re: Property at 19 Lossie Place, Dundee, DD2 4AF (“the Property”)

Parties:

**Mr Charles Grant, 7 The Orchard, Woodside, Burrelton, Blairgowrie, PH13 9NQ
 (“the Applicant”)**

Ms Susan Kettles, 19 Lossie Place, Dundee, DD2 4AF (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) REFUSES the application for Eviction made under s33 of the Housing
(Scotland) (Act) 1988**

Findings and Reasons

This case was heard at the same time as case referenced FTS/HPC/CV/20/0563.
The Respondent in each of the cases is the tenant under the relevant lease.

A Case Management Discussion (CMD) took place by teleconference on 21 July
2020 at 10am.

The Applicant was represented by Tania Royle of Messrs Baillie Shepherd,
solicitors.

The Respondent did not participate in the call. She remains in the Property. Service
of the applications were made upon the Respondent by Sheriff Officer delivery on 12
March 2020. No steps were taken by her thereafter to lodge any response or
representations to either application.

The original Case Management Discussion (CMD) arranged for 17 April 2020 was cancelled due to the coronavirus pandemic. This fresh CMD was intimated to both parties on 18 June 2020 and then also on 17 July 2020.

These applications are under Rules 66 and 70 and seek both an eviction order and a civil order for payment arising from what is said to be a short assured tenancy.

The Property is 19 Lossie Place, Dundee, DD2 4AF.

The applications are accompanied by the following documents :

1. Copy tenancy agreement
2. Copy AT5
3. Copy Notice to Quit and s33 Notice
4. s11 Notice

The tenancy agreement states that entry was on 9 January 2015. The lease was not signed until 29 January 2015. The tenancy agreement was created on 9 January 2015. This is confirmed by the terms of the Notice to Quit which was served upon the Respondent on 29 November 2019. The terms of this Notice to Quit stipulates that the tenancy commenced on 9 January 2015.

The AT5 giving Notice that the lease to be entered into is a short assured tenancy is dated 27 January 2015. This formal document was by prepared professionally by the applicant landlords agents at the time (Mackenzie and Mackenzie) and it is clear that the intention to create a short assured tenancy and the relevant Notice to the Respondent was not given in advance of the tenancy commencing. In such circumstances no short assured tenancy was created. An assured tenancy was created in the alternative. The requirement to serve the required AT5 Notice in advance of the tenancy commencing in terms of s32 of the Housing (Scotland) Act 1988 has not been complied with in this case. The applicant's agent had not identified this in advance but when directed to the relevant documents accepted the fatal error in seeking to create a short assured tenancy in 2015.

The applicant is not entitled to recover possession of the Property under Rule 66 / s33 of the Housing (Scotland) Act 1988. The eviction order sought is refused.

Monthly rent was stipulated in the lease agreement at a rate of £450 per calendar month. The last rent payment was paid in June 2019. As at the time of the application being made to the Tribunal eight months' rent was outstanding totalling £3,600.

Rent arrears have continued and a formal amendment of the total sum sought was made to the Tribunal on 3 July 2020. The new sum sought was £5,400. This amendment application is evidenced to have been intimated to the Respondent.

The Applicant is entitled to recover outstanding rent arrears legally due under the terms of the lease despite the fact that no short assured tenancy was created and despite no eviction order being granted.

The applicant would be entitled to an order for payment in the sum of £5,400 today. Interest is sought at 8%. This is the 'judicial rate of interest' which has no statutory effect for the Tribunal. 3% would compare to short term commercial loans which would be available in the market and be a reasonable rate to be applied.

The Applicant's agent did not ask for the payment order to be made at this stage. This was on the basis that she will be instructed to now take steps to advance an eviction of the Respondent, of new, based upon the assured tenancy in place and on the grounds of more than 3 months' rent being due. She wished to preserve the ability to seek a further amendment of the total rent arrears outstanding. This is reasonable. A further CMD will be scheduled no earlier than 1 November 2020. This is in expectation that the fresh eviction application can be heard at the same time as the ongoing application for payment.

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.

Richard Mill

Legal Member/Chair

21 July 2020

Date