



**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/20/0598

Re: Property at 7 Montgomerie Road, Saltcoats, KA21 5DJ (“the Property”)

Parties:

**Mr Kevin McIntosh, Mrs Rosetta McIntosh, 4A Montgomerie Road, Saltcoats,
KA21 5DJ (“the Applicant”)**

**Mrs Elizabeth Connolly, Mrs Margaret McArthur, 7 Montgomerie Road,
Saltcoats, KA21 5DJ (“the Respondent”)**

Tribunal Members:

Andrew Upton (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an eviction order should be granted.**

FINDINGS IN FACT

1. The Applicants are the landlords, and the Respondents the tenants, of the Property under and in terms of a Short Assured Tenancy Agreement which commenced on 12 December 2019.
2. In terms of clause 1.4 of the Tenancy Agreement, the tenancy commenced on 12 December 2015 and was for an initial period of 6 months. It continued thereafter on a month to month basis.
3. In terms of clause 5.1 of the Tenancy Agreement, a minimum of 28 days’ notice to quit required to be given to stop the contract from being extended by tacit relocation.

4. The Applicants had given notice to the Respondents in form AT5 prior to the commencement of the tenancy that the tenancy was to be a short assured tenancy.
5. By notice dated 23 October 2019, the Applicants gave the Respondents Notice to Quit the Property on or before 12 January 2020 in the prescribed form.
6. In October 2019, the Applicants gave the Respondents Notice in terms of Section 33 of the Housing (Scotland) Act 1988 that they required possession of the property at 12 January 2020.

FINDINGS IN FACT AND LAW

1. The Short Assured Tenancy reached its end at 12 January 2020.
2. Tacit relocation is not operating, having been stopped by service of a valid notice to quit on an appropriate period of notice in October 2019.
3. The Short Assured Tenancy having reached its end at 12 January 2020, tacit relocation no longer operating, and notice under section 33(1)(d) having been given by the Applicants to the Respondents requiring possession of the Property by 12 January 2020, an order for possession of the Property must be granted.

STATEMENT OF REASONS

1. This Application called before me for its Case Management Discussion by teleconference call on 8 October 2020. The Applicants both participated in the CMD. The First Respondent (Mrs Connolly) participated in the CMD. She indicated that she was also representing the Second Respondent (Mrs McArthur, her mother).
2. The Application seeks an eviction order under section 33 of the Housing (Scotland) Act 1988. The Applicants produced the tenancy agreement with the Application, together with a variety of notices to quit and notices under section 33 of the Housing (Scotland) Act 1988.
3. During the CMD, the following facts were agreed by the parties:-
 - a. The Applicants are the landlords, and the Respondents the tenants, of the Property under and in terms of a Short Assured Tenancy Agreement which commenced on 12 December 2019.
 - b. The Applicants had given notice to the Respondents in form AT5 prior to the commencement of the tenancy that the tenancy was to be a short assured tenancy.

- c. By notice dated 23 October 2019, the Applicants gave the Respondents Notice to Quit the Property on or before 12 January 2020 in the prescribed form.
 - d. In October 2019, the Applicants gave the Respondents Notice in terms of Section 33 of the Housing (Scotland) Act 1988 that they required possession of the property at 12 January 2020.
4. In advance of the CMD, the Respondents submitted written representations setting out why they felt that it was unreasonable to grant the eviction order. Those representations focused on the difficulties that they had experienced in finding other accommodation which was suitable for the special needs of Mrs Connolly's son, allegations of broken promises by the Applicants, and allegations of improper behaviour by Mr McIntosh in particular. However, for reasons that I will now explain, the representations and allegations made by the Respondents are irrelevant to this Application.
5. In terms of section 33 of the Housing (Scotland) Act 1988:-

“33.— Recovery of possession on termination of a short assured tenancy.

- (1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied—
 - (a) that the short assured tenancy has reached its end;
 - (b) that tacit relocation is not operating; 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.
- (2) The period of notice to be given under subsection (1)(d) above shall be—
 - (i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;
 - (ii) in any other case, two months.
- (3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.
- (4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which

has arisen as at that time shall end (without further notice) on the day on which the order takes effect.

- (5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”
6. The parties accept that the tenancy is a Short Assured Tenancy, notice in form AT5 having been given prior to the commencement of the tenancy. Accordingly, the Applicants are entitled to found upon section 33 of the Housing (Scotland) Act 1988.
7. In terms of clause 1.4 of the Tenancy Agreement, the tenancy commenced on 12 December 2015 and was for an initial period of 6 months. It continued thereafter on a month to month basis. In terms of clause 5.1 of the Tenancy Agreement, a minimum of 28 days’ notice to quit required to be given to stop the contract from being extended by tacit relocation (i.e. to stop it continuing month to month). The Notice to Quit dated 23 October 2019 provided sufficient notice to terminate the contractual tenancy on 12 January 2020, which was an ish date. As such, I am satisfied that sections 33(1)(a) and (b) are satisfied.
8. The parties agree that a notice in terms of section 33(1)(d) was given by the Applicants to the Respondents in October 2019 specifying that the Applicants required possession of the Property on 12 January 2020. Whatever date in October that notice was given, it provided more than 2 months’ notice as required by section 33(2). Accordingly, I am satisfied that section 33(1)(d) is satisfied.
9. In terms of Rule 17 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure, the Tribunal may do anything at a CMD that it may do at a Hearing, including make a Decision. In terms of Rule 2 of the Rules of Procedure, the Tribunal must have regard to the overriding objective to deal with proceedings justly when making a decision, including the need to deal with proceedings without delay.
10. Section 33 offers no discretion. Where the factors in section 33(1) are satisfied then the Tribunal must grant the order. The Coronavirus (Scotland) Act 2020 altered that, but only in respect of notices served after 7 April 2020. Accordingly, I have no discretion. I must grant the order sought in the Application. In the circumstances, I decided that it would be inappropriate to allow the matter to continue. I exercised my discretion under Rule 17 and decided to grant the eviction order.

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.

8.10.2020

A. Upton

Legal Member/Chair

Date