



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 (“the 1988 Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/19/3528

**Re: Property at Basement Flat, 477 Shields Road, Glasgow, G41 1NP
 (“the Property”)**

Parties:

**Southside Factoring and Related Services Limited, incorporated under the Companies Acts (Company number SC286509) and having their registered office at 135 Fifty Pitches Road, Glasgow, G51 4EB
 (“the Applicant”)**

**TC Young, Solicitors, 7 West George Street, Glasgow, G2 1BA
 (“the Applicant’s Representative”)**

**Mr Alan Cree and Mr Philip Stewart Cree, Basement Flat, 477 Shields Road, Glasgow, G41 1NP
 (“the Respondents”)**

Tribunal Members:

**Susanne L M Tanner Q.C. (Legal Member)
 Leslie Forrest (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) (i) was satisfied in terms of Section 33 of the 1988 Act that the short assured tenancy for the Property has reached its end; tacit relocation is not operating; no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and the Applicants have given to the Respondents two months’ notice stating that they require possession of the house; and (ii) made an order for possession in terms of Section 33 of the 1988 Act

Statement of Reasons

1. The Applicant's Representative made an application to the tribunal on 1 November 2019 in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicant seeks the Respondents' eviction from the Property under Section 33 of the 1988 Act (possession on termination of a short assured tenancy).
3. The Applicant's Representative lodged:
 - 3.1. A paper apart to the application;
 - 3.2. a copy of the lease between Southside Housing Association and the Applicant dated 24 February 2016;
 - 3.3. A copy of the Short Assured Tenancy Agreement between the Applicant and the Respondents dated 8 February 2017;
 - 3.4. Copies of AT5 notice to the Respondents dated 8 February 2017;
 - 3.5. Copy of notices to the Respondents under Section 33(1)(d) of the 1988 Act, dated 5 August 2019, notifying the Respondents that the Applicant required possession of the Property as at 8 October 2019;
 - 3.6. Copy of a Notice to Quit dated 5 August 2019, notifying the Respondents that they were required to remove from the Property with effect from 8 October 2019;
 - 3.7. Sheriff Officer's Certificates of service of the Notice to Quit and Section 33 Notice dated 7 August 2019;
 - 3.8. a copy of the Section 11 Notice which was sent to the local authority.
4. On 15 November 2019, the Application was accepted for determination and a Case Management Discussion ("CMD") was thereafter fixed for 24 February 2020 at 1400h in Glasgow Tribunals Centre, York Street, Glasgow.
5. On 6 December 2019 parties were notified by letter of the date, time and place of the CMD and told that they were required to attend. Parties were also advised in the same letter that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the Application, which may involve making or refusing an eviction order. If parties do not attend the CMD this will not stop a

decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Respondent was afforded the opportunity to return written representations to the tribunal's offices by 27 December 2019.

6. The Application paperwork and notification of the date, time and place of the CMD was personally served on the Respondents on 16 December 2019.
7. The Respondents did not submit any written representations in response to the eviction case or the related civil application CV/19/3529 prior to the Case Management Discussion.
8. A Case Management Discussion ("CMD") took place on 13 January 2020. Reference is made to the Notes on the Case Management Discussion which were sent to parties by letter of 14 January 2020. The Respondents indicated that they were seeking more suitable accommodation but that they were limited to the private sector due to requiring two bedrooms arising from health issues. The Respondents indicated that they were not opposing the order for eviction but required more time before an order was made. The matter was continued to a hearing to allow the Respondents to seek legal advice. At the CMD parties were asked to lodge brief submissions in the form of an executive summary for this and the related civil application, to be sent to the tribunal no later than 5pm on 3 February 2020 and any documents and affidavits to be relied upon to be sent to the tribunal no later than 5pm on 14 February 2020, together with a list of witnesses.
9. A hearing was fixed for 24 February 2020 at 1400 in Glasgow Tribunals Centre, York Street, Glasgow.
10. On 3 February 2020, the Applicant's Representative lodged submissions on behalf of the Applicant. A copy was sent to the Respondents.
11. On 13 February 2020, the Applicant's Representative lodged an Inventory of Productions and List of Witnesses on behalf of the Applicant.
12. On 13 February 2020, the Second Respondent submitted written submissions by email. In the submissions the Respondents stated that they do not want to contest the eviction charge. They stated that they had been searching for suitable accommodation since August 2019.
13. On 14 February 2020, the Respondents hand delivered documentation to the tribunal's offices, in respect of this and the related civil application.

14. On 17 February 2020, the Respondents submitted two witness statements and a bundle of photographs of the Property, in relation to this and the related civil application.
15. On 18 February 2020, the Second Respondent sent an email asking for emails of 13 and 17 February and attachments to be added to the documentation already submitted in respect of both applications.
16. The written representations and documentation submitted by the Respondents was sent to the Applicant's Representative on 18 February 2020.

17. Hearing: 24 February 2020 at 1400 at Glasgow Tribunals Centre

- 17.1. Mrs Mullen, solicitor, from the Applicant's Representative attended on behalf of the Applicant.
- 17.2. The Respondents both attended.

17.3. Submissions by Applicant's Representative

- 17.4. Mrs Mullen advised the tribunal that the parties had engaged in discussions prior to the hearing in an effort to resolve the matters in the civil application. Mrs Mullen advised the tribunal that the efforts to settle the civil application had been unsuccessful. Mrs Mullen stated that her instructions were to seek an order for possession in the eviction application and to seek an adjournment to another date in the civil application in order that the Applicant and its Representative could consider the documentation submitted by the Respondents.
- 17.5. Mrs Mullen submitted that as the order for possession was not opposed and as the terms of Section 33 had been met that the tribunal should grant the order for possession. She referred to the written submissions lodged which contained the following statements and submissions:
 - 17.5.1. The Applicant served AT5 Notices on each tenant at 17.07h on 8 February 2017. The Short Assured Tenancy agreement was signed by both Respondents at 1708 and 1709 on 8 February 2017.
 - 17.5.2. The initial term of the tenancy ended on 8 August 2017 and thereafter the tenancy continued on a two monthly basis until it was terminated on 8 October 2019 by service of notice to quit. The notice to quit terminated the short assured tenancy at its ish and prevented the operation of tacit relocation.

17.5.3. The tenancy has reached its end, tacit relocation is not operating and the landlord has given notice to the tenant stating that he requires possession of the house. The applicant has therefore complied with the provisions for terminating a short assured tenancy and it was accordingly submitted that the tribunal must issue an order for possession. Further it was submitted in terms of Section 20(6) of the 1988 Act that it was not competent for the tribunal to adjourn, suspend or postpone execution of the order or postpone the date of possession.

17.5.4. The section 11 Notice was emailed to the Council on 30 October 2019.

17.6. Respondents' oral submissions

17.7. The Respondents confirmed that they were not opposing the order for possession which was being sought. They stated that they knew, having had the benefit of legal advice, that they cannot oppose the order for possession provided that the proper process has been followed on behalf of the Applicant and accepted that it had been.

18. The tribunal makes the following findings-in-fact:

18.1. There was a short assured tenancy between the parties for the initial period 8 February 2017 to 8 August 2017.

18.2. Thereafter the tenancy continued on a two monthly basis by tacit relocation under 8 October 2019.

18.3. The short assured tenancy reached its end on 8 October 2019 by service on behalf of the Applicant on the Respondents, on 7 August 2019, of a Notice to Quit dated 5 August 2019, notifying the Respondents that the tenancy would reach its termination date as at 8 October 2019.

18.4. Tacit relocation is no longer operating;

18.5. No further contractual tenancy is for the time being in existence.

18.6. A Section 33 notice was served on behalf of the Applicant on the Respondents on 7 August 2019, notifying the Respondents that the Applicants required vacant possession as at 8 October 2019.

18.7. The Applicant has given to the Respondents at least two months' notice stating that they require possession of the Property.

18.8. The Application to the tribunal was made on 1 November 2019, which is within the period of 6 months from the date of service of the notices.

19. Findings in Fact and Law

19.1. The tribunal is satisfied that the requirements of Section 33 of the 1988 Act are met and therefore must make 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.

24 February 2020

**Susanne L M Tanner Q.C.
Legal Member/Chair**