



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/19/3237

Re: Property at 1/2 17 Loons Road, Dundee, DD3 6AA (“the Property”)

Parties:

Mr David Ball, The Hall Sinnington, York, YO62 6SF (“the Applicant”)

Miss Jaime Crossan, 1/2 17 Loons Road, Dundee, DD3 6AA (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order has to be granted.

Background:

On 7 November 2019 the Applicant applied to the First –tier Tribunal for Scotland Housing and Property Chamber (the Tribunal) for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988 (the 1988 Act). Initially the application had been made on 8 October 2019 with reference to Ground 8 of Schedule 5 of the Housing (Scotland) Act and further information had been requested by the Tribunal as the application enclosed a S 33 Notice and Notice to Quit but no AT6 notice.

On 7 November 2019 the Applicant’s representatives, Direct Lettings (Scotland) Ltd. lodged a S 11 Notice to the Local Authority and an amended application page referring now to an application for recovery of possession on the basis of a S 33 Notice and a Notice to Quit all in terms of S 33 of the 1988 Act.

The Applicant lodged with the application the Short Assured Tenancy Agreement dated and commencing 17 March 2017 with original ish date 17 September 2017 as well as a copy of the AT5 signed 17 March 2019, the Notice to Quit and L Notice

both dated 15 July 2019 and the Sheriff Officers letter confirming service of these on the Respondent on 16 July 2019 and a letter dated 17 July 2019 to the Respondent regarding the moving out process. The application was thus accepted as complete on 15 November 2019 by the Tribunal.

The application was intimated to the Respondent and a Case Management Discussion (CMD) fixed for 10 January 2020. The Respondent was served by Sheriff Officers with the notification on 9 December 2019 and both parties were advised that the Tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application.

The Case Management Discussion:

The Applicant did not attend but was represented by Ms Laidlaw from Direct Lettings Scotland Ltd. The Respondent did not attend and had not made any representations to the Tribunal prior to the CMD.

The Applicant's representative referred the Tribunal to S 33 (1) of the Housing (Scotland) Act 1988 and moved for an order. She advised that no contact had been made by the Respondent and that the Respondent remains living in the premises. If the tests of S 33 (1) of the Housing (Scotland) Act 1988 are met there is no discretion for the Tribunal and the order must be granted. All issues were discussed at the Case Management Discussion and the facts of the case were clear.

Findings in Fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement headed Short Assured Tenancy Agreement on 17 March 2017 with an end date at 17 September 2017 (Clause 1) with a rolling continuation on a monthly basis (Clause 37).
2. Form AT5 was served on the Respondent prior to the Tenancy Agreement being signed on 17 March 2017. The receipt of the form AT5 on the Respondent prior to the creation of the tenancy is specifically acknowledged in Clause 39 of the Tenancy Agreement.
3. The tenancy was a Short Assured Tenancy in terms of S 32 of the 1988 Act.
4. Notice to Quit was served on the Respondent by Sheriff Officers on 16 July 2019 advising of the termination of the tenancy on the 17 September 2019.
5. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent by Sheriff Officers on 16 July 2019 advising of the intention to repossess the premises on 17 September 2019.
6. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.

7. The Respondent had remained in the property at the date of the CMD.

Reasons for the Decision:

The Tribunal make the decision on the basis of the written evidence lodged by the Applicant.

In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The Respondent did not make any written representations and did not attend the CMD. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

In terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its ish

2. That tacit relocation is not operating
3. That no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
4. That the landlord has given to the tenant notice that he requires possession of the house.

In this case there was not dispute that the tenancy is a short assured tenancy which had reached its original ish on 17 September 2017 and continued thereafter month to month. The landlord had served a notice to quit with 2 months notice on 16 July 2019 for the ish on 17 September 2019 and thus tacit relocation did not operate. The contractual tenancy had come to an end. The landlord had served on the Respondent a notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 with the required 2 months notice period on 16 July 2019 for the date of 17 September 2019.

The Tribunal has no discretion in the matter. The conditions for an order for possession in terms of S 33 (1) of the Housing (Scotland) Act 1988 have been evidenced by the Applicant in the documentation lodged and are not disputed. Thus the Tribunal grants the order for possession as per the application.

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.

Petra Hennig-McFatrige

Legal Member/Chair

10.1.2020

Date