

Housing and Property Chamber
First-tier Tribunal for Scotland



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 ("1988 Act")

Chamber Ref: FTS/HPC/EV/18/2629

Re: 4 Balkemback Farm Cottages, Tealing, Dundee, Angus, DD4 0RF ("the Property")

Parties:

A A Duncan & Son, Balkemback Farm, Tealing, Dundee, DD4 0RF ("the Applicant")

Miss Leanne Muckersie and Mr Paul Scullion, both 4 Balkemback Farm Cottages, Tealing, Dundee, Angus, DD4 0RF ("the Respondents")

Tribunal Member:

Pamela Woodman (Legal Member)

Present:

The case management discussion in relation to case reference FTS/HPC/EV/18/2629 took place at 2pm on Wednesday 9 January 2019 at Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee, DD1 2HB ("the CMD"). The Applicant was not present at the CMD but was represented by Caitlyn Haddow ("Applicant's Representative") of Countrywide / Slater Hogg & Howison. Both Respondents were present in person. The clerk to the Tribunal was Victoria Hammill.

Decision

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

BACKGROUND

1. An application was made to the Tribunal under section 33 of the 1988 Act. The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("HPC Rules") which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property

Chamber (Procedure) Regulations 2017, as amended, ("**2017 Regulations**"). More specifically, the application was made in terms of rule 66 (*Application for order for possession upon termination of a short assured tenancy*) of the HPC Rules.

2. The order sought was an order for possession of the Property.
3. A notice of acceptance of the application was issued by the Tribunal dated 20 November 2018 under rule 9 of the HPC Rules ("**Notice of Acceptance**"), which confirmed that the application paperwork had been received by the Tribunal between 1 and 22 October 2018.
4. At the request of each of the parties, the location of the CMD had been changed from The Credo Centre in Aberdeen to Dundee Carers Centre in Dundee. As a preliminary matter during the CMD, it was confirmed that no one had an objection to the change of venue.
5. This decision arises out of the CMD.

PROCEEDINGS

6. The Legal Member explained that the application had been brought in terms of rule 66 and so the Applicant was seeking an order for possession in terms of section 33 of the 1988 Act on termination of a short assured tenancy.
7. The Respondents confirmed that they did not object to the grant of an order for possession on that basis. Mr Scullion told the Legal Member that the Respondents had contacted the local authority regarding new accommodation and they were hopeful that there would be something available for them soon, there being some repairs required to a possible property for them before they could move in.
8. The Applicant's Representative confirmed that the notice to quit and the section 33 notice had been served together in the same envelope by recorded delivery on each of the Respondents. The Respondents confirmed that they had received the notice to quit and the section 33 notice.
9. The Applicant's Representative confirmed that Andrew Beastall, the person named as the signatory on various notices provided with the application paperwork, worked for Countrywide / Slater Hogg & Howison and was acting as the agent for the Applicant, as landlord, in signing the notices.

FINDINGS OF FACT

10. The form AT5 dated 27 November 2015 appeared on the face of it to be valid and to have been served before the creation of the tenancy agreement. The terms of the original and subsequent tenancy were each for a "term of not less than six months". Therefore, the Legal Member was satisfied, on the balance of probabilities, that the tenancy was a short assured tenancy as defined in section 32 of the 1988 Act.

11. The notice to quit dated 20 July 2018 brought the tenancy to an end on a possible ish date (namely 27 September 2018), allowed for an adequate period of notice and contained the information prescribed in The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988. Accordingly, it met the requirements for a valid notice to quit.
12. The notice "under section 33" dated 20 July 2018 met the requirements of section 33(1)(d) of the 1988 Act and allowed for an adequate period of notice and so met the requirements for a valid section 33 notice.
13. Given the nature of the application, the Legal Member did not require to consider the form AT6 provided. However, the Legal Member noted that, had she been required to consider it, the form AT6 provided was not valid because it did not comply with the requirements of section 19 of the 1988 Act, including the requirement to state which of the ground or grounds for possession as set out in schedule 5 to the 1988 Act were being relied upon. The purported "ground" stated in the form AT6 provided was not one of the schedule 5 grounds. In addition, in terms of section 19(3) of the 1988 Act, there is a "prescribed form" for the form AT6 (section 19 notice). The current "prescribed form" is set out in the schedule to The Rent Regulation and Assured Tenancies (Forms) (Scotland) Regulations 2017, which came into force on 1 December 2017. The form AT6 provided with the application paperwork was not in the prescribed form.

REASONS FOR DECISION

14. Section 33(1) of the 1988 Act provides that "...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 finish;
 - b. that tacit relocation is not operating; and
 - c.
 - 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."
15. The Legal Member was satisfied, on the balance of probabilities, that the tenancy was a short assured tenancy, that it had been brought to an end on its ish date, that tacit relocation was not operating (as a result of the service, and expiry of the period of notice under, the notice to quit) and that the Respondents had been given notice that the Applicant required possession of the house (as a result of the service, and expiry of the period of notice under, the section 33 notice). Accordingly, the Tribunal was required to grant an order for possession.

DECISION

16. The Tribunal decided that an order be granted against the Respondents for possession of the Property under section 33 of the 1988 Act, which order was not to be executed prior to 12 noon on Tuesday 12 February 2019.
17. The order referred to in the preceding paragraph was intimated orally to the Respondents and the Applicant's Representative by the Legal Member during the CMD.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P Woodman

Legal Member

9 January 2019

Date