

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**

Reference number: FTS/HPC/EV/19/2473

Date Order was granted 27 November 2019 in presence of the Respondent

Property: Deerpark Farmhouse, Inch, Stranraer, Wigtonshire, DG9 8NY

Parties:

Lochinch Maintenance Trust, Stair Estates Office, Sheuchan, Castle Kennedy,
Stranaer DG9 8SL ("the Applicant")

John Mark Bain and Donna Bain, spouses, residing at Deerpark Farmhouse, Inch,
Stranraer, Wigtonshire, DG9 8NY ("the Respondent(s)")

Tribunal Members:

Paul Doyle (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") makes an order for possession of the Property in terms of section 33 of the Housing (Scotland) Act 1988.

Background

The Applicant sought recovery of possession of the Property in terms of Section 33 of the Housing (Scotland) Act 1988 (the "1988 Act"). The Applicant had lodged with the Tribunal Form E. The documents produced were a Tenancy Agreement and form AT5 both dated 16 October 2015, a s.33 notice and a Notice to quit served on 15 May 2018. A copy title sheet was lodged with the Tribunal which showed that the applicant is the heritable proprietor of the Property.

Case Management Discussion

A case management discussion took place before the Tribunal at 11.30am on 27 November 2019 at the North West Castle Hotel, Stranraer. The Applicant was represented by Mr C Peace. John Mark Bain appeared for both respondents.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Short-Assured Tenancy Agreement for the Property dated 15 October 2015.
2. The period of the Lease was from 23 October 2015 to 22 March 2016 and thereafter on a month to month basis.
3. The initial rent in terms of the Tenancy Agreement was £500 per month. The parties entered into a separate license to occupy for commercial premises adjacent to this property, which are used as kennels for the respondents' thirty dogs. This application relates to a dwelling-house only. The Kennels are the subject of a separate contract. The rent for the kennels attracts VAT and is a separate commercial arrangement.
4. The Tenancy Agreement set out the grounds on which the Landlord could seek recovery of possession of the Property in terms of Schedule 5 of the 1988 Act.
5. A Form AT6, a notice to quit and a s.33 notice (all dated 15 May 2019) were served on the Respondent on 15 May 2019. The respondents accept that the tenancy is a short-assured tenancy and that they received the notice to quit, the s.33 notice and the form AT6 timeously.
6. An Application was made to the Tribunal on 7 August 2019 which was more than two months after the date of service of the AT6.
7. The Applicant sought recovery of possession of the Property in terms of s.33 of the Housing (Scotland) Act 1988 because the short-assured tenancy had been brought to an end on 23 July 2019 by the service of the s.33 notice.
8. The respondents would like to stay in the property. They have built their home there. They have sought suitable alternative accommodation, and are concerned about the future for their 30 dogs. They accept that they have no stateable defence to an application for eviction from the property

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act. The tenancy was a short-assured tenancy. Correct notice was given which brought the short-assured tenancy to an end on 23 July 2019. The basis for possession set out in s.33 of the 1988 Act is established. The respondents offer no stateable defence to the application and accept that the finite time for occupancy of the property as a short-assured tenancy has come to an end. For these reasons, the Tribunal determined to grant an Order for possession. The AT6 has been served on the Respondent and has provided the requisite period of notice. This Application has been made within a period of 6 months after the service of the AT6.

Decision

For the foregoing reasons, the Tribunal determined to make an Order for possession.

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.

Paul Doyle

Legal Member

27 November 2019