



**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/19/3767

Re: Property at 1/1, 18 Baxter Terrace, Dundee, DD4 6NP (“the Property”)

Parties:

**JBF Properties Limited, 15 Strathern Road, Broughty Ferry, Dundee, DD5 1NJ
 (“the Applicant”)**

**Ennova Law, 26 George Square, Edinburgh, EH8 9LD (“the Applicant’s
 Representative”)**

**Miss Gillian Mackie, residing at 1/1, 18 Baxter Park Terrace, Dundee, DD4 6NP
 (“the Respondent”)**

Tribunal Members:

Ruth O’Hare (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
 Tribunal”) determined to make an order for repossession of the Property against
 the Respondent.**

Background

1 By application dated 21 November 2019 the Applicant sought an order for repossession against the Respondent under section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The following documents were submitted in support of the application:-

- (i) Copy Tenancy Agreement between the parties dated 28 October 2008 together with Form AT5;
- (ii) Copy Notice to Quit dated 17th April 2019 giving the Respondent notice to leave the property by 27th October 2019;

- (iii) Copy Notice under section 33(1)(d) of the 1988 Act dated 17th April 2019 intimating that the landlord required possession of the house as at 27th October 2019;
 - (iv) Certificate of service from Sheriff Officers dated 23rd April 2019 in respect of the aforementioned notices; and
 - (v) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Dundee City Council.
- 2 By Notice of Acceptance of Application dated 13th January 2020 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds to reject the application. A Case Management Discussion was therefore assigned for 2nd March 2020.
- 3 The application paperwork together with notification of the date, time and location of the Case Management Discussion was served on the Respondent on 29th January 2020 by Sheriff Officers.

The Case Management Discussion

- 4 A Case Management Discussion took place on 2nd March 2020. The Applicant was represented by Kirsty Waugeman, Solicitor from Ennova Law. The Respondent was present and accompanied by her daughter. She was represented by Peter Kinghorn, Solicitor.
- 5 The Legal Member clarified with Mr Kinghorn that the Respondent was not opposing the application but was seeking a suspension of the order to allow time for her to source appropriate alternative accommodation with the Local Authority. Mr Kinghorn confirmed this to be the case and confirmed that he would be looking for an extra month. The Legal Member asked Ms Waugeman what the Applicant's position was in relation to this request.
- 6 Ms Waugeman advised that the Respondent had been aware of the Applicant's position for some time and was aware that she can't remain in the property after the termination date. Accordingly the Applicant would be opposing the request. Ms Waugeman confirmed that there were no issues with rent arrears or conduct of the tenancy. In response to questions from the Tribunal, she conceded that there was no significant urgency in recovering the property but again pointed to the fact that the Respondent had been aware of this for some time and it was only fair that the Applicant receive the property back.
- 7 Mr Kinghorn advised that the Respondent was seeking accommodation from the local authority and that they had only started to look at her request seriously when the notices expired in October. Mr Kinghorn had been in touch with the local authority and the Respondent had been asked to extend her

choices in terms of areas to increase her options in terms of alternative accommodation. The matter had only really been a real live issue since October. Mr Kinghorn confirmed that he and the Respondent would be meeting with the Council in due course to look at extending the areas of choice. He noted that the Respondent would also have the opportunity to obtaining private rented accommodation if no suitable council alternative was available.

Relevant Law

8 Sections 32 and 33 of the Housing (Scotland) Act 1988 provide as follows:-

32 Short assured tenancies.

(1) A short assured tenancy is an assured tenancy—

(a) which is for a term of not less than six months; and

(b) in respect of which a notice is served as mentioned in subsection (2) below.

(2) The notice referred to in subsection (1)(b) above is one which—

(a) is in such form as may be prescribed;

(b) is served before the creation of the assured tenancy;

(c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and

(d) states that the assured tenancy to which it relates is to be a short assured tenancy.

(3) Subject to subsection (4) below, if, at the finish of a short assured tenancy—

(a) it continues by tacit relocation;

the continued tenancy shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.

(4) Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued tenancy is not to be a short assured tenancy.

(5) Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.

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 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.

(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 finish 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.

Findings in Fact and Law

- 9 The parties entered into a Tenancy Agreement dated 28 October 2008, the term of which was a period from 28 October 2008 to 27 October 2009. In the absence of explicit provision in the Tenancy Agreement, the tenancy continued by tacit relocation thereafter.
- 10 The tenancy was a Short Assured Tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 11 On 17th April 2019 the Respondent was served with a Notice to Quit terminating the tenancy as at 27th October 2019 and Notice under section 33(1)(d) of the Housing (Scotland) Act 1988 informing her that the Applicant required possession of the property as at that same date.
- 12 The Short Assured Tenancy has reached its end as at 27th October 2019. Tacit relocation is not operating.
- 13 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

Reasons for Decision

- 14 The Tribunal was satisfied that it was able to make a decision at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Respondent had conceded that she had no stateable defence to the action and was simply seeking additional time to obtain alternative housing with the local authority.

- 15 The Applicant sought recovery of possession under section 33 of the Housing (Scotland) Act 1988. Section 33 can only be relied upon for repossession of a short assured tenancy. The Tribunal was satisfied based on the application paperwork that the tenancy was a short assured tenancy as defined by section 32 of the 1988 Act in that it was for a minimum of six months and a Form AT5 had been given to the Respondent prior to the signing of the tenancy agreement confirming that the tenancy she was entering into was a short assured tenancy.
- 16 The Tribunal therefore considered the provisions of section 33. The Respondent had been served with a valid Notice to Quit which terminated the tenancy as at 27th October 2019. The Respondent had also been served with at least two months notice stating that the landlord required possession of the house as at that date. Based on the Tribunal's findings in fact, the Tribunal therefore considered that the requirements of section 33 had been met. On that basis it was obliged to make the order for repossession.
- 17 The Tribunal then considered whether to suspend the enforcement of the order under Rule 16A of the Procedural Rules. Having heard submissions from the parties on this point the Tribunal determined to suspend the enforcement of the order for a period of six weeks, which was considered to be fair and proportionate taking into account the fact that the Respondent had been aware of the Applicant's intention for nearly a year, the rent was up to date and there were no conduct issues, and the local authority had only been looking seriously at the matter since October 2019.
- 18 The Tribunal therefore made an order for repossession of the property against the Respondent.

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.

Ruth O'Hare

Legal Member/Chair

2/3/20

Date