



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

Chamber Ref: FTS/HPC/EV/23/3970

Re: Property at 1-2, 46 Windsor Crescent, Clydebank, G81 3JY (“the Property”)

Parties:

Mr Mike Rafter, Ardmay Cabins, Shore Road, Arrochar, Argyll and Bute G83 7AH (“the Applicant”)

Ms Wendy Lyttle, 1-2, 46 Windsor Crescent, Clydebank, G81 3JY (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and Helen Barclay (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to refuse the Application for an order for possession of the Property.

Background

1. By application dated 8th November 2023, the Applicant sought an order for possession of the Property under section 33 of the Housing (Scotland) Act 1988 (“the Act”) and in terms of rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. The application was accepted by the President of the First-tier Tribunal for Scotland Housing and Property Chamber and referred for determination by this tribunal.
3. A Case Management Discussion (“CMD”) was arranged to take place on 21st June 2024 and appropriate intimation of that hearing was given to all parties.

4. The CMD was conducted by remote telephone conference call, on 21st June 2024. The Applicant joined the CMD call. The Applicant's wife, Mrs. Diane Rafter also joined the CMD call as an observer. The Respondent also joined the CMD call.

5. The respondent confirmed that she had been able to take certain advice in relation to the application from the Local Authority housing department. She did not seek to challenge the application, but had been advised by the Local Authority that she should join the CMD call to allow her to be notified of the Tribunal's decision in relation to the application.

6. Copies of various documents were provided by or on behalf of the Applicant, including:
 - a. Tenancy agreement between the Applicant and the Respondent in respect of the Property dated 11th July 2014 ("Tenancy Agreement"), which stated that:
 - i. it was a short assured tenancy.
 - ii. the tenancy commenced on 11th July 2014.
 - iii. the expiry date of the initial term was 11th January 2015, being the date which was 6 months after the date of entry; and
 - iv. following completion of the initial term (and so with effect from 11th January 2015), it would continue "until the 11th day of each successive month (the repeat "ish") until formal termination in accordance with clause 6". Clause 6 of the agreement confirmed that the Landlord could terminate the tenancy by service of notices including a notice to quit.

 - b. Notice to Quit addressed to the Respondent, given on behalf of the Applicant, dated 1st April 2023 and noting that the Respondent was being given formal notice to quit the Property by 15th September 2023.

 - c. Section 33(1)(d) notice addressed to the Respondent, given on behalf of the Applicant, dated 1st April 2023 notifying the Respondent that the Applicant, as landlord of the Property, required possession of the Property.

 - d. Section 11 notice to West Dunbartonshire Council

7. Section 33 of the Housing (Scotland) Act 1988 provides that:

"The First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

 - (a) that the short assured tenancy has reached its ish.
 - (b) that tacit relocation is not operating.

- (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, and
- (e) that it is reasonable to make an order for possession.”

PRELIMINARY ISSUES AND REASONS

8. The tribunal had noted that the initial term of the tenancy was for a period of six months from (and including) 11th July 2014 to (and including) 11th January 2015. The tenancy agreement was clear in its terms that the tenancy would continue after that initial term, on a month to month basis, to the 11th Day of each successive month. The ish date of the tenancy after the initial term of the tenancy was the 11th day of each successive month.
9. The Notice to Quit sought to bring the tenancy to an end on 15 September 2023. That date was not an “ish” of the Tenancy.
10. Therefore, the Notice to Quit was not valid or effective.
11. As no valid Notice to Quit has been served by the Applicant, tacit relocation continues to operate in respect of the Tenancy between the Parties.
12. The tribunal are not satisfied that the terms of Section 33(a) and Section 33(b) of the Act are met in relation to the tenancy between the parties.
13. At the CMD the Applicant accepted that the Notice to Quit was not valid and did not seek to argue otherwise.
14. As the terms of Sections 33(a) and Section 33(b) of the 1988 have not been met the Tribunal refuses to grant the order for eviction as sought by the Applicant.
15. The decision of the Tribunal is unanimous.

Decision

16. In all the circumstances, we refuse to grant an order against the Respondent for eviction from the Property under Section 33 of Act.

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.

Andrew Cowan

21st June 2024

Legal Member/Chair

Date