

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.

Chamber Ref: FTS/HPC/EV/19/0090

Re: Property at 30 Buccleuch Road, Sanquhar, DG4 6BX (“the Property”)

Parties:

Mr R Nigel Miller, 17 Dalbeattie Road, Dumfries, DG2 7PF (“the Applicant”)

Mr Fraser McArthur, 30 Buccleuch Road, Sanquhar, DG4 6BX (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision in absence of the respondent.

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the property at 30 Buccleugh Road Sanquhar DG4 6BX be granted and accordingly grants an order for possession.

This was a case management discussion ‘CMD’ in connection with an application in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules, ‘the rules’ and s33 of the Housing (Scotland) Act 1988, ‘the Act’. The tribunal had before it the following copy documents:

1. Application dated 11 January 2019 and received on that date.
2. Notice to quit dated 10 July 2018.
3. S33 notice dated 4 December 2018.
4. S11 notice to local authority.
5. Proof of service of s33 notice dated 4 December 2018
6. Proof of service of notice to quit dated 10 July 2018.
7. AT5.
8. Tenancy agreement.
9. Sheriff Officer’s execution of service on respondent dated 5 March 2019.

10. Applicant's title to the property.

Mr Kenneth McLean solicitor attended the CMD on behalf of the applicant. The respondent did not attend and he was not represented.

Preliminary matter

1. The tribunal noted that the execution of service of the notice to quit dated 10 July 2018 was unsigned although there was a copy recorded delivery slip attached. Mr McLean was able to sign the copy at the CMD and the tribunal was satisfied with that.
2. The tribunal noted that the notification carried out to the local authority had an error in it. The box was ticked for "Scottish Secure Tenancy" whereas this was a short assured tenancy and box 2 should have been ticked. Mr McLean advised the tribunal that his client has made inquiries with the local authority and the respondent has already been offered an alternative tenancy by them. He also undertook to carry out the proper intimation today. (The correct intimation was carried out and lodged with the tribunal shortly after the CMD concluded as applicant's solicitors have an office adjacent to the place where the CMD took place in Sanquar). In accordance with the tribunal's overriding objective the tribunal decided that this was sufficient and proceeded to hear the application.

Findings in fact

1. The applicant is the owner of the property.
2. The applicant entered into a short assured tenancy with the respondent for let of the property for the initial period of 6 months from 16 September 2013 and monthly thereafter.
3. The respondent was served with a valid notice to quit on 10 July 2018 with an ish date of 16 September 2018.
4. The respondent was served with a valid s33 notice on 4 December 2018.
5. The short assured tenancy has reached its ish.
6. Tacit relocation is not operating.
7. No further contractual tenancy is in existence.

Reasons

The tribunal is satisfied that the respondent has received notice of today's CMD in terms of rule 24. The tribunal had sight of the execution of service of the CMD date and application on the respondent by sheriff officer on 5 March 2019. The tribunal

proceeded with the CMD in the respondent's absence in terms of rule 29. The tribunal considered that it had enough information before it today to make a decision and the procedure has been fair. The tribunal accordingly granted the mandatory order sought.

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.

Lesley Ward

27 March 2019

Legal Member

Date