

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/17/0474

**Re: Property at 62 Rowanside Terrace, Ardrossan, Ayrshire, KA22 7LJ (“the
Property”)**

Parties:

**Mr David Mcvey, Mrs Catherine McVey, 5 Provost Black Drive, Tayport, Fife,
DD6 9HD; 5 Provost Black Drive, Tayport, Fife, DD6 9HD (“the Applicant”)**

**Ms Danielle Andrews, 62 Rowanside Terrace, Ardrossan, Ayrshire, KA22 7LJ
 (“the Respondent”)**

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

1. This is an application by the Applicant for an order for possession on termination of a short assured tenancy in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The tenancy in question was a Short Assured Tenancy of the Property by the Applicant to the Respondent commencing on 28 April 2016.
2. The application was dated 11 December 2017 and lodged with the Tribunal shortly thereafter. The application was raised in the name of David McVey and Catherine McVey.
3. The application relied upon a Notice to Quit and a notice in terms of section 33 of the Housing (Scotland) Act 1988, both dated 26 September

2017, providing the Respondent with notice (respectively) that the Applicant sought to terminate the Short Assured Tenancy and have the Respondent vacate, each by 28 November 2017. Evidence of service of the said notice upon the Respondent was provided orally at the case management discussion as having occurred on 26 September 2017.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon North Ayrshire Council was provided with the application. The date of service was not given but it appeared to have been produced around 4 January 2018, in advance of the application being accepted as complete (which occurred on 7 February 2018).

The Hearing

5. On 23 May 2018, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at Ayr Town Hall, Ayr, I was addressed by Mr and Mrs McVey, principally through Mr McVey. Also in attendance were the Applicant's letting agents, Helen Boyd and Deborah Styles.
6. There was no appearance by the Respondent though email correspondence had been received from her to the Tribunal on 21 May 2018 indicating that she was unable to attend but did not seek a postponement. The emails did not disclose any representations on the subject matter of the application though confirmed that she had vacated the Property and was seeking to clear it of belongings. (The emails further made a proposal in payment of rent but I was informed by Mr McVey that this is the subject of a separate application to the Tribunal.) In the circumstances, I was satisfied to consider the application in full at the CMD in the absence of the Respondent.
7. I reviewed the papers in support of the application with Mr McVey. Ms Boyd further clarified that, despite the lack of evidence of postage of the notices of 26 September 2017, she understood they were sent by recorded delivery post on that day and also hand-delivered to the Property on the same day. Ms Boyd referred to an email from the Respondent confirming receipt. (An email from the Respondent in the application did confirm this, though it was dated 7 November 2017 and referred to her partner having held back the papers from her until around that time, so as not to concern her during a period of medical treatment.)
8. In addition to the emails from the Respondent, I was aware that Sheriff Officers had intimated the CMD upon the Respondent at a new address on the basis that she had already left the Property. Mr McVey confirmed that, notwithstanding the Respondent appeared to have left the Property, the Applicant still sought an order in the application. Mr McVey explained that the Respondent's contact with the letting agents had been poor and he appeared cynical as to whether cooperation would now occur on vacant possession.

9. I sought to be addressed by the Applicant on whether Mr McVey was correctly included in the application. The Applicant confirmed that she was the sole landlord and she was satisfied to amend the application to remove Mr McVey henceforth. He was, however, to remain representing her at the CMD.
10. Mr McVey confirmed no order in respect of expenses was to be made.

Findings in Fact

11. On 28 April 2016, the Applicant let the Property to the Respondent by lease with a start date of 28 April 2016 with a duration of six months, thereafter continuing on a month to month basis until terminated ("the Tenancy").
12. The Tenancy was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988 further to the Applicant issuing the Respondent with a notice under section 32 of the 1988 Act (an "AT5") on 28 April 2016, prior to commencement of the Tenancy.
13. On 26 September 2017, the Applicant's letting agent drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that she was to quit the Property by 28 November 2017.
14. On 26 September 2017, the Applicant's letting agent drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the Applicant required possession of the Property by 28 November 2017.
15. 28 November 2017 is an ish date of the Tenancy.
16. On 26 September 2017, the Applicant's letting agent competently served each of the notices upon the Respondent by recorded delivery. The Respondent was thus provided with sufficient notice of the Applicant's intention that the Tenancy was to terminate on 28 November 2017.
17. On 11 December 2017, the notice period under the notices having expired, the Applicant raised proceedings for an order for possession with the Tribunal, under Rule 66, the grounds of which being that the Tenancy had reached its ish; that tacit relocation was not operating; that no further contractual tenancy was in existence; and that notice had been provided that the Applicant requires possession of the Property all in terms of section 33 of the 1988 Act.
18. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon North Ayrshire Council on or around 4 January 2018 on the Applicant's behalf.

19. On 26 April 2018, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 23 May 2018.

Reasons for Decision

20. The application was in terms of rule 66, being an order for possession upon termination of a short assured tenancy. I was satisfied, on the basis of the application and supporting papers, Ms Boyd's submissions to the CMD, and in light of the Respondent's email correspondence showing she had received the notices, had apparently vacated in compliance with them, and was extending no defence or dispute to the notices, that the requirements of the 1988 Act had been complied with.
21. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. I was thus satisfied to grant an order for possession.

Decision

22. In all the circumstances, I was satisfied to amend the application to delete David McVey from the application and allow it to continue in the name of Catherine McVey alone, and thereafter make the decision to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988 in normal terms.

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.

Joel Conn

Legal Member/Chair

23 May 2018
Date