



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/19/0587

Re: Property at 5 Izatt Terrace, Clackmannan, FK10 4HA (“the Property”)

Parties:

Mr Robert Turner, 40 Gaberston Avenue, Alloa, FK10 3SR (“the Applicant”)

Ms Kyrna Neil, 5 Izatt Terrace, Clackmannan, FK10 4HA (“the Respondent”)

Tribunal Member:

Susan Christie (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application be Dismissed.

Background

1. This Application for Recovery of Possession of the Property was made on 22 February 2019.
2. The Application is made under Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (‘the Rules’) – Possession on Termination of a Short Assured Tenancy under Section 33 of the Housing (Scotland) Act 1988 (‘the Act’).
3. On 1 April 2019 both Parties were written to intimating the time, date and venue of the Case Management Discussion (CMD): 24 April 2019 at 2pm in Wallace House, Maxwell Place, Stirling, FK8 1JU.
4. Written Representations were required to be made by the Respondent by 17 April 2019. None were lodged.

5. The Respondent received intimation of the CMD and was issued with the accompanying papers in support of the Application along with Guidance Notes by Sheriff Officer Service on 3 April 2019.

The Case Management Discussion

6. The CMD took place at in Wallace House, Maxwell Place, Stirling, FK8 1JU on 24 April 2019 at 2pm.
7. The Applicant was in attendance representing himself.
8. The Respondent was absent.
9. The Paperwork lodged in support of the Application was discussed in detail particularly the Notice to Quit, Section 33 Notice of the Act and the Notice served on the local authority under Section 11 of the Homelessness etc. (Scotland) Act 2003.
10. The current tenancy between the Parties commenced on 24 June 2016. It was signed on that date. The initial term being 24 June 2016 to 24 December 2016 then monthly thereafter until the tenancy is ended. At least two months prior written notice is to be given by the Landlord. It is named as a Short Assured Tenancy.
11. A document headed, AT5 under section 32 of the Housing (Scotland) Act 1988 ("the Act"), was produced.
12. The Notice to Quit produced is defective. The date that the tenant was required to leave by is stated as 15 April 2019. This does not coincide with a finish date. In addition, it does not contain the information which it requires to have in it, to comply with The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988.
13. The Notice served on the local authority under Section 11 of the Homelessness etc. (Scotland) Act 2003 is defective as the wrong box has been ticked on page 2-Short Scottish Secure tenancy instead of an Assured tenancy.
14. The Section 33 Notice produced relies on a flawed Notice to Quit.
15. An AT6 was produced which did not relate to the Rule under which the application had been made. It too was flawed as the Ground relied on was not narrated in full at Part 2 and the reason was not given at Part 3.

Findings in Fact

- I. The Parties entered into a Contractual Short Assured Tenancy which commenced on 24 June 2016. The initial term being 24 June 2016 to 24 December 2016 then monthly thereafter until the tenancy is ended.
- II. The finish date is the 24th of every month.
- III. The Notice to Quit produced is defective. The date that the tenant was required to leave by is stated as 15 April 2019. This does not coincide with a finish date. In addition, it does not contain the information which it requires to have in it, to comply with The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988.
- IV. The Contractual Short Assured Tenancy continues by tacit relocation and it has not reached its finish.

- V. The Notice served on the local authority under Section 11 of the Homelessness etc. (Scotland) Act 2003 is defective as the wrong type of tenancy is relied upon.

Findings in Fact and Law

- VI. The Applicant is not entitled to recovery of repossession under section 33 of the Act as the requirements of that section 33(1) have not been met.
- VII. The Application dated 22 February 2019 for recovery of Possession is refused.

Reasons for Decision

16. The paperwork produced along with this Application is flawed and the Contractual Short Assured Tenancy continues by tacit relocation and it has not been ended by a valid Notice to Quit. The requirements contained in section 33(1) of the Act are not satisfied. I therefore cannot 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.

Susan Christie

Legal Member/Chair

24 April 2019

Date