



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/20/0922

Re: Property at Fyne View, Otter Ferry, Argyll, PA21 2DH (“the Property”)

Parties:

Baroness Miranda Van Lynden, Otter Ferry, Argyll, PA21 2DH (“the Applicant”)

Mr Andrew Smith, Fyne View, Otter Ferry, Argyll, PA21 2DH (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for possession of the property and the removal of the Respondent from the property.

Background

1. By application dated 12 March 2020 the Applicant’s representatives, Gillespie MacAndrew, Solicitors, Edinburgh, applied to the Tribunal for an order for possession of the property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant’s representatives submitted a copy of the lease, form AT5, Notice to Quit, Section 33 Notice, Certificate of Service by Sheriff Officers, Section 11 Notice and email to Argyll & Bute Council.
2. By Notice of Acceptance dated 29 June 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.
3. Intimation of the Case Management discussion was sent to the Applicant’s representatives by post on 31 July 2020 and was served on the Respondent by Sheriff Officers on 4 August 2020.

The Case Management Discussion

4. A Case Management Discussion was held by teleconference on 21 August 2020. The Applicant did not attend but was represented by Mr McConnell from the Applicant's representatives. The Respondent did not attend and was not represented. The Tribunal being satisfied that intimation having been given to the Respondent determined to proceed in his absence in accordance with Rule 29 of the First-tier Tribunal Housing and Property (Procedure) Regulations 2017 ("the 2017 Rules").
5. Mr McConnell advised the Tribunal that the parties entered into a Short Assured Tenancy Agreement that commenced on 1 April 2010 that endured until 31 March 2011 and from month to month thereafter. He said the Applicant was obliged to give the Respondent two months' notice to bring the tenancy to an end and on 17 October 2019 Sheriff Officers served a Notice to Quit and Section 33 Notice on the Respondent providing that he should vacate the property by 31 December 2019. Mr McConnell went on to say that the Respondent had remained in the property and this application had then been made to the Tribunal.
6. Mr McConnell advised the Tribunal that it was his understanding that the Respondent may have removed himself from the property either at the end of the last week or the beginning of this week however the Applicant wished the security of having an order for possession given the history of the application and in case there should be any dispute as to whether the Respondent had in fact removed from the property. Mr McConnell could not confirm if the Respondent had returned all the keys to the property.
7. The Tribunal noted that the lease was in the joint names of the Respondent and Mrs Anne Smith. Mr McConnell advised the Tribunal that Mrs Smith had passed and the Respondent was the sole surviving tenant.
8. Mr McConnell confirmed that a Section 11 notice had been sent by email to Argyll and Bute Council on 12 March 2020 and asked the Tribunal to grant the order sought.

Findings in Fact

9. The Applicant entered into a Short Assured Tenancy Agreement with the Respondent and Mrs Anne Smith that commenced on 1 April 2010 and endured until 31 March 2011 and from month to month thereafter.
10. Mrs Anne Smith is deceased.
11. The Respondent was served with a Notice to Quit and Section 33 Notice under the 1988 Act by Sheriff Officers on 17 October 2019 requiring him to remove from the property by 31 December 2019.

12. Intimation of these proceedings was sent by way of a Section 11 Notice to Argyll & Bute Council by email on 12 March 2020.

Reasons for Decision

13. The Tribunal was satisfied from the documents produced together with the oral submissions that the parties had entered into a Short Assured Tenancy that had endured for a period of one year and that had continued thereafter from month to month with either party being able to bring the tenancy to an end by giving two months written notice.

14. The Tribunal was satisfied from the documentary evidence and oral submissions that the joint tenant Mrs Anne Smith had died and that a proper Notice to Quit and Section 33 Notice had been served on the remaining tenant, the Respondent, by Sheriff Officers giving him the required period of notice.

15. The Tribunal was satisfied from the documentary evidence and the oral submissions that proper notice of the proceedings by way of a Section 11 Notice had been given to Argyll & Bute Council.

16. Although the Respondent may have very recently have removed himself from the property the Tribunal accepted that it was nonetheless appropriate to provide the Applicant with the security of an order for possession where there was some doubt as to whether the Respondent had in fact fully removed himself from the property.

17. The Tribunal being satisfied that the statutory provisions of section 33 of the 1988 having been met determined the Applicant was entitled to the order sought.

Decision

18. The Tribunal being satisfied that it had sufficient information before it to make a decision without the need for a hearing and having considered the documents submitted together with the oral submissions finds the Applicant entitled to an order for possession of the property and the removal of the Respondent from the property.

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.

G Harding

Legal Member/Chair

21 August 2020

Date