



**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/19/1012

Re: Property at Ground Floor Left, 12 Rosefield Street, Dundee, DD1 5PP

Parties:

Quarry Management and Investment Company Ltd, having their registered office at Quarry Cottage, Main Street, Inchtute, Perth, PH14 9RN ("the Applicant")

J Myles and Company, Solicitors, 7-9 Tay Street, Dundee, DD1 1NU ("the Applicant's Agent")

Mr Wayne Pitkeithley, Ground Floor Left, 12 Rosefield Street, Dundee, DD1 5PP ("the Respondent")

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to make an order for repossession of the property against the Respondent.

Background

- 1 By application dated 29 March 2019 the Applicant sought an order for recovery of possession of the property under sections 18 and 33 of the Housing (Scotland) Act 1988. The Applicant submitted the following documentation to accompany the application:-
 - a. Copy Tenancy Agreement dated 12th February 2011;
 - b. Copy Form AT5 dated 11th February 2011;
 - c. Copy Certificate of Service by Sheriff Officers dated 11th December 2018 with copy Notice to Quit, Section 33 Notice and Form AT6;

- d. Copy Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
 - e. Rent Statement from October 2015 to February 2018.
- 2 The Applicant's Agent subsequently clarified that the Applicant sought recovery of possession on the basis of section 33 alone, in accordance with rule 66 of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017 as amended.
 - 3 By Notice of Acceptance of Application dated 20th May 2019, the Legal Member with delegated powers of the Chamber President considered that there were no grounds for rejection of application. A Case Management Discussion was therefore assigned for the 9th July 2019.
 - 4 The application paperwork together with notification of the Case Management Discussion was subsequently served upon the Respondent by Sheriff Officers on 5th June 2019.

The Case Management Discussion

- 5 The Case Management Discussion took place on 9th July 2019 at Caledonian House, Dundee. Mr Mel Matthew appeared together with his representative Mr Joe Myles. The Respondent did not attend.
- 6 Mr Matthew confirmed that there had been no contact from the Respondent, the locks appeared to have been changed and he did not know whether he was in fact still occupying the property. Mr Myles advised that the Applicants had previously sought an order under the terms of section 18 of the 1988 Act however that had been unsuccessful, therefore they were pursuing repossession under the terms of section 33.

Findings in Fact and Law

- 7 Mr Mel Matthew and Mrs Margaret Matthew trading as Matthew Properties entered into a Tenancy Agreement with the Respondent dated 12th February 2011 in respect of the Property, the term of which was a period of 6 months from 12th February 2011 and six monthly thereafter.
- 8 The tenancy was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 9 In April 2018, ownership of the property transferred from Mr Mel Matthew and Mrs Margaret Matthew to Quarry Management and Investment Company Ltd. Mr Matthew is the sole director of that company.

- 10 On 11th December 2018 the Respondents were served with a Notice to Quit terminating the tenancy as at 12th February 2019 and Notice intimating that the Landlord required possession of the house as at that same date. Both Notices were served by Sheriff Officers.
- 11 The tenancy has reached its ish as at 12th February 2019. Tacit relocation is not operating. There is no further contractual tenancy in existence.

Reasons for Decision

12 In this case the Applicant seeks an order for repossession of a short assured tenancy under section 33 of the Housing (Scotland) Act 1988

13 Section 33(1) of the Housing (Scotland) Act 1988 provides as follows:-

“(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied—

- (a) That the short assured tenancy has reached its finish;*
- (b) That tacit relocation is not operating;*
- (c)and*
- (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.”*

14 The Tribunal was satisfied that a valid Notice to Quit had been properly served on the Respondent which terminated the contractual tenancy between the parties as at 12th February 2019. Accordingly tacit relocation was not operating. The Respondent had also been given notice that the Applicant required possession of the Property.

15 It was therefore clear from the documentation before the Tribunal that the provisions of section 33 had been met. The Respondent had not sought to dispute the terms of the application. Accordingly there being no dispute regarding the relevant facts of the case, the Tribunal considered that it was able to make sufficient findings to determine the case without a hearing and that to do so would not be prejudicial to the interests of the parties.

16 The Tribunal therefore determined to make an order for repossession under section 33 of the Housing (Scotland) Act 1988.

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.

Ruth O'Hare



Legal Member/Chair

Date



9th July 2019