



**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/18/1223

Re: Property at 19 Lachlan Crescent, Erskine, PA8 6HJ (“the Property”)

Parties:

Miss Fiona Dempster, 17 Glamaig Way, Dunfermaline, KY11 8JE (“the Applicant”)

Mr David Lacey, 19 Lachlan Crescent, Erskine, PA8 6HJ (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Decision (in absence of the Respondent)

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

- Background

This was a case management discussion to consider the application made by the Applicant dated 16th May 2018 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules. The Applicant is the owner of the Property and Landlord. She did not attend the hearing in person but her solicitor who is representing her in these proceedings, did attend and moved that the application be granted. The Respondent did not attend nor did the Respondent lodge any written representations.

The Applicant had lodged and the Tribunal had sight and considered the following documents:-

1. Copy Tenancy Agreement for the Property dated 2nd October 2018
2. Copy AT5 Notice dated 2nd October 2018
3. Notice to Quit dated 27th February 2018
4. S33 Notice dated 27th February 2018

5. Certificate of service of Notice to Quit and S33 notice by Sheriff Officers on 28th February 2018
6. S11 notice to the Renfrewshire Council

The Hearing

The Legal Member explained the purpose of the hearing and advised that the Tribunal could do anything at a case management discussion which it may do at a hearing. The Respondent, who is the tenant, did not attend the hearing and had made no written representations prior to the hearing despite notice of the hearing and the above documentation being served on him by Sheriff Officers on 10th July 2018. The applicant's solicitor Ms McMaster of PRG Partnership solicitors confirmed her client still wished to pursue repossession of the Property as she advised her client was not aware of whether the Respondent was still in the Property or not, but no keys had been returned and the Respondent had not advised he had left. Ms McMaster confirmed she was looking for an order for possession today as she submitted all the notices had been served and an order should therefore be granted in terms of S33 of the Act. She also advised that her client had been seeking expenses but noted that these would only be granted if the Respondent was found to have acted unreasonably. She submitted that if the Tribunal was minded to grant expenses her client would accept them but appreciated unreasonableness had to be shown and could only suggest that by not appearing or engaging in the process the Respondent could be seen to be acting unreasonably.

Findings in Fact

1. The Applicant and Respondent have entered into a short assured tenancy of the Property for a period of 6 months from 2nd October 2017 to 2nd May 2018.
2. The Applicant is the Landlord and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
3. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
4. The rent is £450 per calendar month.
5. The Applicant has served by Sheriff Officers, a Notice to quit and S33 notice on the Respondent terminating the contractual tenancy and giving notice that she required possession of the Property by 2nd May 2018 being the termination date of the tenancy.
6. The Respondent who is the tenant has not vacated the property or responded to the Notice to Quit or S33 notice.
7. The Respondent has been served notice of this application and has made no representations in relation to this Application.

Reasons for Decision

The Applicant has entered into a Short Assured Tenancy with the Respondent. S33 of the Act says "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 for Scotland shall make an order for possession of the house if it is satisfied-

- a) That the short assured tenancy has reached it's ish
- b) That tacit relocation is not operating
- c) That no further contractual tenancy is for the time being in existence 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.

The period of notice required to be given under S33 (1) (d) above is two months, in accordance with the legislation and the terms of the tenancy.

The Short Assured tenancy has reached it's ish, tacit relocation is not operating and there is no further contractual tenancy in existence, so the Applicant having given notice in terms of S33 above, is entitled to repossess the Property. There is no discretion to the Tribunal in these circumstances. The Tribunal is able to make any order at a case management discussion as it can after a Hearing. Considering the Respondent had made no representations and did not attend the hearing, the Tribunal felt it was reasonable, and balancing the interests of both parties, appropriate and just to grant a full order for repossession at this hearing. The Tribunal considered that there was no unreasonable behaviour in the conduct of the case by the Respondent that would justify awarding expenses and refused the motion for expenses.

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.

Jan Todd

Legal Member/Chair

Date 10th August 2018

*Insert or Delete as required