



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Section 33 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/19/1566

Re: Property at 53 Lennox Gardens, Linlithgow, West Lothian, EH49 7PZ (“the Property”)

Parties:

Sharyn Shanks and Ronald Shanks, 26 Bonhard Way, Bo’ness, EH51 9RF (“the Applicants”)

Ms Susan Gibson, 53 Lennox Gardens, Linlithgow, West Lothian, EH49 7PZ (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for repossession of the Property under Section 33 of the Housing (Scotland) Act 1988 be granted. **The order will be issued to the Applicants after expiry of 30 days mentioned below in the right to appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.**

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 23 May 2019 the Applicants’ solicitors, Messrs Sneddens applied to the Tribunal for an order for repossession of the Property under Section 33 of the Housing(Scotland) Act 1988.

2. The application was accompanied by a Short Assured Tenancy from 15 September 2017, an AT5 dated 13 September 2017, a Notice to Quit and Section 33 Notice dated 13 March 2019 requiring possession of the Property from 14 May 2019, a Recorded Delivery receipt dated 13 March 2019 and a letter dated 22 May 2019 giving Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to West Lothian Council.
3. On 1 July 2019 the Tribunal accepted the application.
4. On 12 July 2019 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 29 July 2019. The Tribunal advised both parties that a Case Management Discussion under Rule 17 of the First –tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017(“the Regulations”) would proceed on 20 August 2019. This paperwork was served on the Respondent by Christopher Andrew, Sheriff Officer, Edinburgh on 12 July 2019 and the certificate of service was received by the Tribunal administration.
5. The Respondent did not make any representations by 29 July 2019.

Case Management Discussion

6. The Tribunal proceeded to a Case Management Discussion on 20 August 2019. Mr Shanks, Applicant appeared personally and on behalf of his wife Mrs Shanks who was also an Applicant. There was no appearance by or on behalf of the Respondent.
7. The Tribunal had before it a Short Assured Tenancy signed by Mrs Shanks and the Respondent showing a period of let from 15 September 2017 to 14 March 2018 inclusive and monthly thereafter, an AT5 signed and dated 13 September 2017, a Notice to Quit and Section 33 Notice dated 13 March 2019 requiring possession of the Property from 14 May 2019, a Recorded Delivery receipt dated 13 March 2019 and a letter dated 22 May 2019 giving Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to West Lothian Council. The Tribunal also had a copy of the Land Certificate under Title WLN 25765 which showed the Applicants were the heritable proprietors of the Property.
8. Mr Shanks asked the Tribunal to grant an order for repossession of the Property. The Respondent was in arrears of rent and continued to live in the Property. The Tribunal went through the Short Assured Tenancy, the Notice to Quit and the Section 33 Notice with Mr Shanks and noted the proof of postage by way of Recorded Delivery and the letter addressed to West Lothian Council giving Notice in terms of Section 11 of the Homelessness etc. (Scotland) Act 2003.

Findings in Fact

9. The Applicants are the heritable proprietors of the Property.
10. The Applicants let the Property to the Respondent under a Short Assured Tenancy with a start date of 15 September 2017 until 14 March 2018. The tenancy thereafter continued on a monthly basis. The Respondent is the tenant of the Property.
11. On 13 March 2019 by way of Recorded Delivery post the Applicants' solicitors served a Notice to Quit terminating the tenancy of 14 May 2019.
12. On 13 March 2019 by way of Recorded Delivery post the Applicants' solicitors served a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 indicating to the Respondent that they required repossession of the Property on 14 May 2019.
13. There is no contractual tenancy in existence between the parties
14. The Respondent continues to reside in the Property having failed to vacate on 14 May 2019.

Reasons for Decision

15. The Tribunal considered the documents before it and the submissions made by Mr Shanks. The Tribunal was satisfied the tenancy was a properly constituted Short Assured Tenancy. It was also satisfied that
 - I. The Short Assured Tenancy had reached its end (termination date) on 14 May 2019
 - II. The contractual tenancy was not continuing as the Notice to Quit had been validly served on 13 March 2019 which brought the contractual Short Assured Tenancy to an end on 14 May 2019;
 - III. No further contractual tenancy was in existence; and
 - IV. The Applicants had given the Respondent at least 2 months' notice in terms of Section 33 (1) (d) of the Housing (Scotland) Act 1988 on 13 March 2019 stating that repossession was required on 14 May 2019.
16. In terms of Section 33 of the Housing (Scotland) Act 1988 the Tribunal shall make an order for possession where it is satisfied that the statutory terms have been met. On the basis of the documents before it and on the basis of the submissions on behalf of the Applicants from Mr Shanks the Tribunal was prepared to grant an order for possession of the Property.

Decision

17. The Tribunal granted an order for repossession of 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.

Shirley Evans

Legal Member/Chair



20 August 2019.

Date