

Housing and Property Chamber
First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/17/0555

Re: Property at Flat 1/1, 63 Calder Street, Glasgow, G42 7RR (“the Property”)

Parties:

Mr David Johnstone, 103 Torcy Drive, Girvan, South Ayrshire, KA26 7RR, (“the Applicant”)

Mr Robert Marsland, Flat 1/1, 63 Calder Street, Glasgow, G42 7RR (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision in the absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the application.

Background

The Applicant submitted an application seeking an order to evict the Respondent from the property at Flat 1/1, 63 Calder Street, Glasgow, G42 7RR. The Tribunal intimated the application to the Respondent on 17th January 2018 and advised him of the date, time and place of today’s case management discussion. In that letter, the Respondent was advised that any written representations he wished to make should be sent to the Tribunal by 4th February 2018. No written representations were received by the Tribunal. The Respondent was also told that he required to attend the case management discussion and was informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair.

The Hearing

The hearing took place in the absence of the Respondent. The Applicant was present along with his representative, Miss Modely. The Applicant advised that he sought to recover possession in terms of Ground 1 to Schedule 5 of the Housing (Scotland) Act 1988. The information given by the Applicant was that he previously lived in the property and has recently moved back to Scotland; he sought to recover possession because he requires the property as his principal home. There was no information or evidence before the Tribunal to indicate that the Respondent was given notice prior to commencement of the tenancy that possession might be recovered in terms of Ground 1. On the basis that the Applicant sought to rely on Ground 1, the Tribunal examined the notices which had been served on the Respondent. The relevant notices were the notice to quit and the Notice of Proceedings (Form AT6). Both of these notices are dated 6th September 2017. The notice to quit states that the Respondent should move out by 16th October 2017. The form AT6 states that proceedings would not be raised before 16th October 2017. Curiously the Applicant also served a Section 33 notice on the Respondent dated 20th October 2017 indicating that the Respondent was required to remove from the property on or before 20th December 2017. This application before the Tribunal is dated 16th December 2017.

Findings in Fact:

1. The Applicants and the Respondent entered into a Tenancy Agreement dated 17th and 30th June 2004. The period of the lease was from 30th June 2004 to 30th December 2004. The rent payable was £375 per calendar month, payable in advance.
2. The short assured tenancy continued by tacit relocation.
3. The Applicant served Notice on the Respondent on 6th September 2017 of his intention to raise proceedings to recover possession of the property in terms of Ground 1 to Schedule 5 of the Housing (Scotland) Act 1988, indicating that proceedings would not be raised before 16th October 2017.
4. The Applicant served a Notice to Quit on 6th September 2017 indicating that the Respondent required to remove from the property by 16th October 2017.
5. The Notice of Proceedings (Form AT6) is defective in respect that it provided insufficient notice to the Respondent in circumstances where recovery of possession was sought in terms of Ground 1 to Schedule 5 of the 1988 Act.

Reason for Decision

The Tribunal proceeded on the basis of the written documents which were before it. The Applicant invited the Tribunal to make the Order sought. However, the notice of proceedings was defective and therefore the application must fail.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

N Irvine

Legal Member/Chair

15.02.2018

Date