



**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 (Act)**

Chamber Ref: FTS/HPC/EV/19/1881

Re: Property at 28 Inverkip Drive, Shotts, ML7 4DG (“the Property”)

Parties:

Mr Douglas Charles Taylor, 14 Kingsway, Dundee, DD4 7DE (“the Applicant”)

Mr John Marshall, 28 Inverkip Drive, Shotts, ML7 4DG (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member)

Decision (in absence of the Respondent)

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

Background

This was an application for eviction and recovery of possession under section 33 of the Act and Rule 66 of the Tribunal Procedure Rules.

The Tribunal had regard to the following documents:

1. Application received 18 June 2019;
2. Short Assured Tenancy (**SAT**) commencing 14 March 2017;
3. AT5 dated 14 March 2017;
4. Notice to Quit dated 15 February 2019;
5. Section 33 Notice dated 15 February 2019;
6. AT6 dated 17 May 2019;
7. Certificate of Service by Sheriff Officers of section 33 Notice and Notice to Quit dated 13 March 2019;
8. Statement of Rent Arrears to 8 January 2019;
9. Section 11 Notice to Local Authority; and

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10. Certificate of Service by Sheriff Officers of CMD Notification dated 15 July 2019.

Case Management Discussion (CMD)

The case called for a CMD on 16 August 2019. The Applicant was not present but was represented by his agent, Mr Gray. The Respondent did not appear and was not represented.

The Tribunal had regard to the Sheriff Officers Certificate of Service upon the Respondent which confirmed he had notification of the CMD, the fact that the Tribunal could proceed in his absence and, if satisfied that it had sufficient information to do so and the procedure had been fair, could determine the matter.

The Tribunal accordingly decided to proceed with the CMD.

The Tribunal noted that the tenant under the SAT and AT5 was Manuela Herzog. The Respondent was named as Guarantor under the SAT. Further, the section 33 Notice, Notice to Quit and AT6 were all served on and named Mr William Marshall (not the tenant). The Certificate of Service of the section 33 Notice and Notice to Quit were served on Mr William Marshall.

The section 11 Notice to the local authority described the Respondent as the tenant.

In order for an application to succeed under section 33 a valid SAT must have been created, been validly terminated and tacit relocation not be operating. In this instance an SAT has been created with Ms Manuela Herzog (not the Respondent). To terminate the SAT the section 33 Notice and Notice to Quit require to have been served on the tenant (not the Respondent).

Whilst it appears that the Respondent may be Guarantor under the SAT that does not and cannot constitute a tenancy with him.

Mr Gray explained to the Tribunal that Ms Herzog had been Mr Marshall's partner, that she had died and he had continued to reside in the Property. The Applicant's agents had attempted to contact him to get a new tenancy in place but had heard nothing from him and no rent had been paid since Ms Herzog's death.

Whilst the Tribunal appreciated the circumstances described by Mr Gray the action as raised is incompetent and the Tribunal has no jurisdiction to entertain an eviction action against the Respondent.

There were a number of other errors in the paperwork submitted to the Tribunal as follows:

- (a) The ish date of the SAT was 15th of the calendar month. The Notice to Quit referred to 16 May as the termination date. The Notice to Quit did not validly terminate the SAT;
- (b) The section 33 Notice, Notice to Quit and AT6 were all served on and named William Marshall. The Respondent's name is John Marshall;

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(c) The rent statements produced were for a Property in Wishaw and di not relate to this Property.

The Tribunal was accordingly satisfied that it had sufficient information to determine the matter and it was fair to do so at this stage. The Tribunal refused the application.

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.

Alan Strain

Legal Member/Chair

16 August 2019

Date