



**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/18/1913

**Re: Property at Flat 3 Whitegabbles, 116 St Andrews Drive, Glasgow, G41 4RB
("the Property")**

Parties:

Mr Abdul Chaudry, 71 Ophelia Drive, Warwick, CV34 6XJ ("the Applicant")

**Mr Naveed Nasir, Flat 3 Whitegabbles, 116 St Andrews Drive, Glasgow, G41
4RB ("the Respondent")**

Tribunal Member:

David Preston (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined to issue an order for possession.**

Background:

1. By application dated 27 July 2018 the Applicant applied to the First-tier Tribunal under Rule 66. The application was accompanied by:
 - a copy of the tenancy agreement dated 25 July 2017;
 - Form AT 5 dated 25 July 2017;
 - Notice to Quit dated 11 May 2018;
 - Notice to Local Authority under section 11 of the Homeless etc (Scotland) Act 2004.
2. A Case Management Discussion ("CMD") was held on 11 December 2018 following which a Note of the discussion was issued on 11 December 2018 along with a Direction of the same date. At the CMD it was noted that all necessary documents as listed above had been properly served on the respondent. The Direction required the respondent to provide an explanation in writing of the nature

of the legal defence which he asserted he had to the application by 28 December 2018 and the CMD was continued until 16 January 2019.

3. A further CMD took place on 16 January 2019 at which the respondent appeared. The respondent confirmed that he had taken entry to the property on 25 July 2017 and that he had received the AT5 Notice prior to taking entry. The respondent made assertions about the issue of damage to the property, but it was made clear to him that if the application for possession was under Rule 66, namely the termination of the Short Assured Tenancy. He was given a further 14 days to lodge a written defence to the Rule 66 ground and advised that he was required to attend a further CMD which was fixed for 25 February 2019, failing which an eviction order may be granted.

Case Management Discussion:

4. Ms Kirstie Donnelly, Solicitor, appeared on behalf of the applicant. There was no appearance by or on behalf of the respondent.
5. On 31 January the respondent submitted an email in which he asserted that the application sought possession on grounds under Schedule 5 of the Housing (Scotland) Act 1988 but failed to specify the grounds which suggested to him that the application was made under Rule 65.
6. Ms Donnelly said that the application had been submitted by her client under Rule 66 but accepted that it also made reference to additional grounds, namely that the applicant was looking to sell that property and that the tenant had damaged the property. She pointed out that nonetheless the paperwork to justify an order under Rule 66 was in order and that there was no defence to such an application. In particular the email of 31 January 2019 did not contain any defence to the Rule 66 procedure.
7. Ms Donnelly moved for an award of expenses against the respondent under Rule 40 on the basis that her clients had incurred unnecessary expense in progressing the application.

Findings in Fact:

1. The tenancy between the parties was a Short Assured Tenancy constituted by Tenancy Agreement dated 25 July 2017. It was for an initial period of one year, terminating on 20 July 2018. A valid Notice to Quit dated 11 May 2018 had been served on respondent terminating the tenancy at its ish.
2. The respondent had received all relevant paperwork which was in order.

Reasons:

3. Rule 17(1)(d) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states that the Tribunal "*may do anything*

at a case management discussion which it may do at a hearing, including making a decision". The Tribunal was satisfied that it had before it all the information it required to make a decision and that it would, therefore do so without a hearing.

4. The respondent had been given two opportunities to submit a legal basis for a defence to the application but although he had made assertions in his email of 31 January 2019, he had failed to provide any defence to the Rule 66 application.
5. The tribunal refused the applicant's motion for expenses. It noted that the application had specified the additional grounds to which the respondent appeared to think he had a defence. The previous CMDs had sought clarification on this and had seen fit to continue the CMD until today. The tribunal did not accept that the high bar necessary to be crossed to justify an award of expenses had been crossed.

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.

David Preston

Chairman

26 February 2019.
Date