



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/20/2220

Re: Property at 4 Greenburn Cottage, Reston, Berwick, TD14 5LP (“the Property”)

Parties:

Jean Mitchell or Mole and George Alexander Mole, both 14 Welltower Park, Ayton TD4 5RR and William Alexander Mole, Greenburn Farmhouse, Reston TD14 5LP (“the Applicants”)

Mr Andrew Airlie, 4 Greenburn Cottage, Reston, Berwick, TD14 5LP (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

Background

By application, received by the Tribunal on 21 October 2020, the Applicants sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”), namely recovery of possession on termination of a Short Assured Tenancy.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 1 December 2016 and, if not terminated on 2 June 2017, continuing on a monthly basis until terminated by either Party giving notice to the other. The Applicants also provided a copy of a Form AT5 Notice dated 8 November 2016, a Notice given under Section 33 of the 1988 Act and a Notice to Quit, the latter two Notices being dated 25 February 2020 and both requiring the Respondent to vacate the Property by 2 May 2020. The Applicants provided proof of posting of the Notices on 25 February 2020 with evidence of delivery on the following day.

On 9 December 2020, the Tribunal advised the Parties of the date and time of a Case Management Discussion and the Respondent was invited to make written representations by 16 December 2020. The Respondent did not make any written representations to the Tribunal by that date, but on the day of the Case Management Discussion, emailed representations were made on his behalf by Ms Fay Mackay. The representations included an offer to pay off rent arrears at the rate of £220 per month and narrated the personal situation of the Respondent and the fear that he might lose his home, which was also the home of Ms Mackay and her son.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 19 January 2021. The Applicant was represented by Mr Greig McDonnell of Iain Smith & Partners WS, solicitors, Galashiels. Ms Mackay participated on behalf of the Respondent, Mr McDonnell having confirmed that he had no objection to this, despite the Respondent not, as yet, having advised the Tribunal that she would be representing him. Mr William Mole was also present on the call, with his partner Ms Anne Knox as an observer. They took no active part in the Case Management Discussion. The Applicant's solicitor advised that his instructions were to ask the Tribunal to make an Order for Possession without a Hearing.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides 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 and documentation it required to enable it to decide the application without a Hearing.

Section 33 of the 1988 Act states that the Tribunal shall make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence and that the landlord has given to the tenant notice stating that he requires possession of the house.

The Tribunal was satisfied that the tenancy had reached its end, that, by service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence between the Parties and that the Notice required under Section 33 of the 1988 Act had been properly given. Accordingly, the requirements of Section 33 had been met and the Tribunal was bound to make an Order for Possession of the Property. The Order would be capable of enforcement from midday on 20 February 2021.

The Tribunal sympathised with the position in which the Respondent had found himself, but the Applicants had fulfilled all the requirements set out in the relevant legislation and the Tribunal had no option but to grant the Order for Possession against him. It would be for the Applicants to decide whether and, if so, when to enforce the Order, on or after 20 February 2021.

The Notice to Quit on which the application relied was served prior to 7 April 2020, so the application is not affected by the terms of the Coronavirus (Scotland) Act 2020.

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.

G. Clark

Legal Member/Chair

19 January 2021
Date