

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/2561

Re: Property at 12 Stonelaw Towers, Burnside, Glasgow, G73 3RL (“the Property”)

Parties:

Ms Jacquie Sawkins or Burnside, 11A Victoria Road, Burnside, Glasgow, G73 3QF (“the Applicant”)

Miss Dionne Thomson, 12 Stonelaw Towers, Burnside, Glasgow, G73 3RL (“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 against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicant after expiry of 30 days mentioned below in the right of 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 forth and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 6 August 2019, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an

order for recovery of possession of the Property in terms of Rule 66 the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").

2. On 9 September 2019, the Tribunal accepted the application under Rule 9 of the Regulations.
3. On 12 September 2019 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the Tribunal by 3 October 2019. The Tribunal also advised the Applicant and the Respondent on 12 September 2019 that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 21 October 2019. The Tribunal administration instructed James S Orr, Sheriff Officers to serve the aforesaid communications of the Respondent.
4. On 17 September 2019 David A Orr, Sheriff Officer reported that when they had attended at the Property the door to the Property had been damaged and was lying in the garden. He also reported that the entrance had been boarded up. On making enquiries the Sheriff Officers ascertained that the Property had been raided by the Police a few days earlier and that the Respondent had not been seen since. The Sheriff Officer returned to the Property on 16 September 2019, but the Property was still in the same state and the Respondent had not returned.
5. In the circumstances the CMD of 21 October 2019 was postponed. On 14 October 2019 the Tribunal wrote to the Respondent at the Property to advise that as the papers could not be served at the Property and the application and the CMD notification would be served on her by way of advertisement.
6. In terms of Rule 6A of the Regulations the Tribunal served the notification of the CMD of 18 November 2019 and the application on the Respondent by way of advertisement on the Tribunal's website from 14 October 2019 to 18 November 2019. A copy of the execution of service was prepared by the Tribunal administration certifying service of the application by advertisement on the Respondent.

Case Management Discussion

7. The Tribunal proceeded with a CMD on 18 November 2019. The Applicant, whose name had recently changed to Mrs Burnside was in attendance. She was accompanied by her husband Mr Burnside as her supporter. She was also accompanied by her sister Mrs Gordon. There was no appearance by or on behalf of the Respondent.
8. The Tribunal had before it a detailed application from the Applicant setting out her case for eviction, a copy of the tenancy agreement signed and dated by both parties on 1 November 2017 for a period of 6 months with an AT5 dated 26 October 2017, a Notice to Quit and a Notice under Section 33 of the

Housing (Scotland) Act 1988 both dated 26 February 2018, various copy text messages between the parties and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to South Lanarkshire Council dated 6 August 2019. The Tribunal also had a copy of the Sheriff Officer's report of 17 September 2019 and the Execution of Service by way of Advertisement dated 18 November 2019.

9. The Applicant asked the Tribunal to grant an order for eviction under Section 33 of the Housing (Scotland) Act 1988. The Tribunal noted the terms of the Notice to Quit and Notice under Section 33 of the Housing (Scotland) 1988 dated 26 February 2018 addressed to the Respondent. Both notices were served on the Respondent by the Applicant with her sister Mrs Gordon as witness and requested the Respondent to vacate the Property by 30 April 2018. She explained that she could never get hold of the Respondent personally as she never answered her door and had not seen her for some time.

Findings In Fact

10. The Applicant and Respondent entered into a Short Assured Tenancy on 1 November 2017 in relation to the Property. An AT5 had been served on the Respondent on 26 October 2017 with the tenancy agreement commencing on 1 November 2017 for a period of 6 months.
11. On 26 February 2018 the Applicant served on the Respondent a Notice to Quit terminating the tenancy on 30 April 2018. The service of the Notice to Quit was witnessed by Mrs Gordon.
12. On 26 February 2018 the Applicant served on the Respondent a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 indicating the Applicant intended to take possession of the Property on 30 April 2018. The service of the Section 33 Notice was witnessed by Mrs Gordon.
13. There was no other contractual tenancy in existence between the parties.

Reasons for Decision

14. The Tribunal considered the issues set out in the application. The Tribunal concluded that the Applicant was entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met which would entitle the Applicant to repossess the Property namely that-
 - i. the Short Assured Tenancy had reached its term (termination date) on 30 April 2018;

- ii. the Notice to Quit brought the contractual Short Assured Tenancy to an end on 30 April 2018;
- iii. no further contractual tenancy was in existence; and
- iv. that the Applicant had given the Respondent at least 2 months' notice in terms of Section 33(1) (d) of the Housing (Scotland) Act 1988 stating that possession of the property was required on 30 April 2018.

15. In terms of Section 33(1) of the Housing (Scotland) Act 1988, the Tribunal shall make an order for possession where it is satisfied that the statutory terms of Section 33 of the Housing (Scotland) Act 1988 have been met. Accordingly, the Tribunal found that the Applicant was entitled to an order for possession of the Property and accordingly granted the order sought.

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

18 November 2019

Date