



**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/18/3138

Re: Property at 114 Prosen Street, Glasgow, G32 8RY (“the Property”)

Parties:

Mr Stephen McLellan, 52 Wester Road, Mount Vernon, Glasgow, G32 9JJ (“the Applicant”)

Miss Nicola Guthrie, 114 Prosen Street, Glasgow, G32 8RY (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the property at 114 Prosen Street Glasgow G32 8RY be granted, and granted an order for possession in terms of s33 of the Housing (Scotland) Act 1988.

This was a case management discussion, ‘CMD’ in connection with an application in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules, ‘the rules’ and s33 of the Housing (Scotland) Act 1988, ‘the Act’. The tribunal had before it the following copy documents:

1. Application dated 20 November 2018 and received on the 21 November 2018.
2. Notice to quit dated 24 August 2018.
3. S33 notice dated 24 August 2018.
4. S11 notice to local authority.
5. Proof of service of items 2 and 3 dated 25 August 2018.
6. AT5 signed by respondent on 28 November 2018.
7. Tenancy agreement.
8. Email from tribunal to applicant’s solicitor dated 11 December 2018.

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9. Letter from applicant's solicitors dated 18 December 2018..
10. Sheriff Officer's execution of service of the application and CMD notification on respondent dated 31 January 2019.

Miss Cargill solicitor attended on behalf of the applicant. The respondent did not attend and was not represented.

Preliminary matter

The tribunal noted that the Tribunal administration had written to the applicant's solicitors on 11 December 2018 raising two queries, one regarding the consent of the co proprietor Mrs McLellan's consent to the granting of the lease and the application, and another regarding the timing of the signature of the AT5. The first point was covered in their letter of 18 December 2018 when they exhibited a letter from Mrs McLellan consenting to both the granting of the lease and the lodging of the application.

The second matter was of great significance to the validity of the application and the tribunal, in accordance with the overriding objective, sought to ensure that the matter was clear and evidence on this point was not required. The lease lodged appears to have been signed by the respondent at 4.30 pm on the 28th November 2017. The applicant appears to have signed it at 5pm. The AT5 appears to have been signed by the respondent either at 4.05pm or 5.05 pm on the 28th November 2017. The applicant's solicitor in their letter of 18 December 2018 stated:

Our clients have advised that the Lease was signed at 5.30pm and the Form AT5 was signed at 5.05pm. Parties made an error in noting the times down when the originally signed the Forms, and noted that the Lease was signed at 4.30pm and the AT5 was signed at 4.05pm. They went back and corrected the time the AT5 was signed at but omitted to correct the time on the Lease.

They also drew attention to the clause in the lease, which contained an acknowledgement that the respondent was served with an AT5 before the creation of the tenancy.

After hearing Miss Cargill's submissions on this point and in the absence of any evidence to the contrary the tribunal accepted that a short assured tenancy had been constituted and went on to consider the application.

Findings in fact

1. The applicant and his wife Mrs Louise Margaret McLellan are the owners of the property.

2. The applicant entered into a short assured tenancy with the respondent for let of the property for the initial period of 28 November 2017 until 28 May 2018 and monthly thereafter.
3. The respondent was served with a valid notice to quit and s33 notice on 25 August 2018 with a valid ish date of 28 October 2018.
4. The short assured tenancy has reached its ish.
5. Tacit relocation is not operating.
6. No further contractual tenancy is in existence.

Reasons

The tribunal is satisfied that the respondent has received notice of today's CMD in terms of rule 24. The tribunal proceeded with the CMD in the respondent's absence in terms of rule 29. The tribunal considered that it had enough information before it today to make a decision and the procedure has been fair. The tribunal accordingly granted the mandatory 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.

L. Ward

21 February 2019

Lesley A Ward Legal Member

Date