



**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, as amended**

Chamber Ref: FTS/HPC/EV/18/0424

Re: Property at 261 Wellesley Road, Methil, Leven, KY8 3BN (“the Property”)

Parties:

Mr Kevin Thomas Cox, 58 Townhill Road, Dunfermline, Fife, KY12 0JD (“the Applicant”)

Mr Declan Vettrino, 261 Wellesley Road, Methil, Leven, KY8 3BN (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. The application for recovery of possession of the Property was received by the Tribunal on 21 February 2018. A Notice of Acceptance of the Application by the Tribunal made under Rule 9 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 as amended (“the Rules”) is dated 5 March 2018.
2. The application type was stated as being made under Rule 66 (Possession on Termination of Short Assured Tenancy).
3. On 4 April 1988 a letter was sent to the Applicant’s Representative intimating the day and time of the Case Management Discussion and providing information on that.
4. On 5 April 2018 Walker Love, Sheriff Officers served a copy of a letter from the Tribunal dated 4 April 2018 on the Respondent together with supporting documentation, specifically drawing his attention to the Case Management

Discussion assigned for 25 April 2018 at 2pm in Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy, KY1 1XT, which he is required to attend. The mode of service being by way of letterbox service with a copy being sent to him by ordinary post in addition.

- 5. The letter itself sets out the details of the application made and invites the Respondent to make written representations to the Tribunal by 23 April 2018; highlights to the Respondent that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing including making a decision on the application which may involve making or refusing an eviction order or payment order; and that if he did not attend the Case Management Discussion, this would not stop a decision or order being made by the Tribunal if the Tribunal considers that it has sufficient information before it to do so and the procedure has been fair.
- 6. No written representations were made by the Respondent.

The Case Management Discussion

- 7. The Applicant was represented by Ms Caldwell of Morgans solicitors.
- 8. The Respondent was not in attendance. I was satisfied proper intimation of the date and time had been made on the Respondent.
- 9. The documents lodged in support of the application were examined and discussed.
- 10. A copy AT5 form had been produced along with a Short-Assured Tenancy Agreement (SAT) between the parties, both of which were dated 31 October 2016. The AT5 having been served prior to the tenancy agreement. I was satisfied that the tenancy was a Short-Assured tenancy under section 32 of the Housing (Scotland) Act 1988, as amended (“the 1988 Act”).
- 11. The initial term of the SAT was 14 November 2016 to 14 May 2017 and continued in terms of the contract thereafter monthly on the 14th of each month, until such times as it was ended by either party giving notice to terminate it.
- 12. A Notice to Quit had been served on the Respondent at the instance of the Applicant by his letting agent dated 9 November 2017 and was served by Sheriff Officers on 10 November 2017 by Scott & Co. Sheriff Officers. The mode of service being by means of letterbox service and by ordinary post in addition. The date of removal was stated as 14 January 2018. I was satisfied that the Notice to Quit was valid.
- 13. A Notice had also been served on the Respondent at the same time by the Sheriff Officers, called a section 33 Notice under the 1988 Act. The date of expiry being 14 January 2018. I was satisfied it complied with the requirements of section 33 of the 1988 Act.
- 14. The Applicant’s solicitor had also served a Form AT6 on 20 December 2018. It was agreed that this could be disregarded as the application had not been made under Rule 65.
- 15. I was asked to grant an order for recovery of possession in favour of the Applicant under section 33 of the 1988 Act, the requirements of section 33(1) having been complied with. I was told that rent in addition had not been paid since August 2017 and the sum due was now £3,600. There had been no contact recently between the letting agent and the Respondent. Enquiries

appeared to suggest that the Respondent's possessions were still within the Property and an order was required.

Findings in Fact

- I. The parties entered into a Short-Assured Tenancy on 30 October 2016 which continued by tacit relocation thereafter on a monthly basis on 14th of every month.
- II. The contractual Short-Assured Tenancy ended on 14th January 2018 by reason of the service by the Applicant's letting agent of a valid Notice to Quit. Tacit relocation is not operating.
- III. A section 33 Notice was also served by the Applicant's letting agent under the 1988 Act. The date of expiry being 14 January 2018. It complied with the requirements contained in section 33 of the 1988 Act.

Finding in Fact and law

- IV. The Applicant is entitled to recover possession of the Property from the Respondent.

Reasons for Decision & Decision

The Respondent was not in attendance not had he made written representations. I was satisfied proper intimation had been made on the Respondent. The tenancy is a Short-Assured Tenancy in terms of section 32 of the Housing(Scotland) Act 1988, as amended. The Applicant is entitled to recover possession of the Property so long as the requirements of section 33 of the 1988 Act, as amended are satisfied. In this application I am satisfied that the documentary evidence produced, and submission meets the requirements of that section of the Act and therefore I must make an order.

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.

S Christie

Legal Member/Chair

25 April 2018
Date