



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/17/0511

Re: Property at 1 West Cottage, Coal Farm, St Monans, Fife, KY10 2DQ (“the Property”)

Parties:

Mr Peter Peddie, Coal Farm, St Monans, Anstruther, Fife, KY10 2DQ (“the Applicant”)

Ms Katherine McMaster, 1 West Cottage, Coal Farm, St Monans, Fife, KY10 2DQ (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision

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

Background

This is an application dated 14th December 2017 brought in terms of Rule 66 (Application for order for possession upon termination of a short assured tenancy) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended.

The Applicant provided with his application copies of the short assured tenancy agreement, form AT5, Notice to Quit, Section 33 notice, Section 11 notice to the local authority intimating the same. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the Housing (Scotland) Act 1988, and the procedures set out in that Act had been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 13th February 2018, and I was provided with the executions of service.

A Case Management Discussion took place in this case on 15th March 2018 when the Applicant was represented by Miss Matheson solicitor and the Respondent appeared by means of a telephone conference call as she could not attend in person. On that occasion the Respondent sought a postponement of the Case Management Discussion as she had not had a proper opportunity to read the Tribunal papers in advance of the date as she advised she is in poor health and had required to deal with issues regarding her benefits over an extensive period. She also wished to attempt to obtain representation for the Tribunal proceedings. The Applicant's solicitor opposed a postponement and sought an order in terms of Section 33 of the 1988 Act. Having regard to all of the circumstances, in particular that the Respondent had not had the opportunity to properly read the Tribunal papers and given the requirement for the Tribunal to act justly, a postponement was permitted. At that time a new case management discussion was fixed for 26th April 2018. The Respondent was directed to contact the Tribunal by 16th April to advise of her state of preparation and if she had secured representation.

The Tribunal received an email from the Respondent on 25th April outlining the efforts she had made to obtain representation for the Tribunal which had been unsuccessful.

Case Management Discussion

At the case Management Discussion on 26th April the applicant was again represented by Miss Matheson solicitor and the Respondent again appeared by telephone conference call. It was confirmed with the Respondent that she had sight of copies of the Application, the short assured tenancy agreement, Form AT5, Notice to Quit, Section 33 notice, Section 11 notice to the local authority and had the opportunity to consider these.

The Respondent sought a further postponement of the Case Management Discussion again to allow her to obtain representation which she had been unable to do. This was opposed by the Applicant's solicitor on the basis of the nature of the order sought and the fact that various notices ending the tenancy agreement and giving Notice to Quit had been served as far back as September of 2017. Having regard to all the circumstances including the nature of the matter, the fact that the Respondent accepted she had known of the matter since at least October 2017 and the fact that she had already had an opportunity to obtain representation the request was refused by the Tribunal.

The Tribunal then set out the issues and explained the law to the Respondent. There was no dispute that the Respondent had received the various notices which the Applicant's solicitor said had been hand delivered by the Applicant on 29th September 2017. The Respondent could not recall the exact date of receipt of the documents but did not dispute the date of 29th September 2017 as stated by the Applicant's solicitor. There was no dispute that these notices had given more than 2 months' notice that the tenancy agreement was terminated, as required by the agreement itself.

Further the Respondent did not dispute that the tenancy agreement had been a short assured tenancy in terms of the 1988 Act, that this had come to an end and that tacit relocation was not in operation.

Reasons For Decision

In terms of Section 33 of the Housing (Scotland) Act 1988, the Tribunal shall make an order for possession of the house let on the tenancy if:

the short assured tenancy has reached its end;

tacit relocation is not operating;

The landlord has given to the tenant notice stating that he requires possession of the house.

All of the above criteria have been satisfied in this application, and accordingly the Tribunal shall make an order for possession.

Decision

In these circumstances, the Tribunal will make an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 sought in this application.

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.

Valerie Bremner

Legal Member

26th April 2018

