

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 66 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/20/1651

Re: G/L, 317 Clepington Road, Dundee, DD3 8DB ("the Property")

Parties:

John Street Scotland Ltd, 1 Faraday Court, Faraday Street, Dundee, DD2 3UD ('the Applicants')

Ms Joanne McDonald, G/L, 317 Clepington Road, Dundee, DD3 8DB ('the Respondent')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Member: Jacqui Taylor (Legal Member)

Background

1. The Applicants applied to the Tribunal for eviction/ possession of the Rented Property under section 33 of the Housing (Scotland) Act 1988, in terms of Rule 66 of the Procedure Rules. The application was dated 4th August 2020. The application states:

'Notice has been served to bring the tenancy to an end in line with section 33(1)(d) of the Housing (Scotland) Act 1988. The Tenant has not left the property as of the last day of notice. Thus this action is required.'

2. Documents lodged with the Tribunal were:-

2.1 The Tenancy Agreement dated 28th April 2015.

2.2 Form AT5 dated 28th April 2015.

2.3 A copy of the Notice to Quit dated 28th January 2020 giving the Tenant formal notice to quit the Property by 28th April 2020.

2.4 A copy of the Section 33 Notice to the Tenant dated 28th January 2020 advising her of the Landlords' requirement to possess the Property as at 28th April 2020.

2.5 Recorded delivery slip dated 29th January 2020 showing that the letter had been signed for by 'McDonald'.

2.6 Section 11 Notice addressed to Dundee City Council

2.7 Email to Dundee City Council dated 4th August 2020 sending them the section 11 Notice.

3. Case Management Discussion

This case called for a Case Management Discussion (CMD) Conference call at 14.00 on 8th October 2020.

The Applicants did not attend but their representative Stephen Forsyth, solicitor attended on their behalf.

The Respondent did not attend but her representative Rebecca Menzies, Dundee North Law Centre attended on her behalf.

4. The Tribunal identified with the parties' representatives the following agreed facts:

4.1 The Applicants are Landlords of the Property. They are owners of the Property and their title is registered in the Land Register of Scotland under title number ANG67116.

4.2 The Respondent is Tenant of the Property in terms of the Short Assured Tenancy between the parties. The term of the Tenancy was from 28th April 2015 to 28th October 2015 and month to month thereafter.

5. Requirements of Section 66 of the Procedure Rules.

(a) The Tribunal confirmed that the application correctly detailed the requirements of section 66 of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlord.
- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenant.

(b) The Tribunal confirmed that the application had been accompanied by the documents specified in Section 66(b) of the Procedure Rules:

- (i) The Tenancy Agreement.
- (ii) The Notice that the tenancy is a short assured tenancy.
- (iii) The notice given to the tenant under section 33(1)(d) of the 1988 Act.
- (iv) The notice to quit served by the Landlords on the Tenant.
- (v) The required notice giving Dundee City Council notice of the proceedings under section 11 of the Homelessness etc Scotland Act 2003.

The Applicants provide a copy of the recorded delivery slip dated 29th January 2020 in respect of sending the Respondent the Notice to Quit and section 33 Notice, together with evidence that they had been signed for by the Tenant.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords as required by Section 66(c) of the Procedure Rules.

6. Requirements of Section 33 of the Housing (Scotland) Act 1988

The Applicants confirmed that there is no further contractual tenancy agreement between the parties.

The tenancy commenced on 28th April 2015 and ended on 28th October 2015 and continued month to month thereafter. Notice to Quit and section 33 notice had been served on the Tenant by recorded delivery post on 29th January 2020. Both documents required the Tenant to vacate the Property on 28th April 2020, being the ish of the tenancy. More than the required two months period of notice had been provided.

The Tribunal were satisfied that the requirements of section 33 have been met, namely that:

- (i) The Short assured Tenancy has reached its ish.
- (ii) That tacit relocation is not operating.
- (iii) That no further contractual tenancy is in existence.
- (iv) That the Landlord has given to the Tenants notice stating that he requires possession of the Property. In terms of section 33(2) the period of notice is two months.

7. Oral Representations.

Stephen Forsyth advised the Tribunal that he sought the order of eviction as there was no storable defence.

Rebecca Menzies asked for the execution of the eviction order to be delayed to allow the Respondent time to make application to the housing department.

8. Coronavirus (Scotland) Act 2020

The Tribunal acknowledged that Notice to Quit had been served on the Respondent on 29th January 2020, prior to the commencement date of the Coronavirus (Scotland) Act 2020 (7th April 2020) and therefore the extended period of notice of six months and the reasonableness test do not apply.

9. Decision

The Tribunal determined that the requirements of section 33(1) of the Housing (Scotland Act) 1988 had been complied with and as there was no storable defence they and made an order for possession of the Property. They further determined that there were no grounds on which to delay execution of the order beyond 10th November 2020.

10. 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.

J. T

Legal Member

8th October 2020