



**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/19/0055

Re: Property at 36 Rigghead, Stewarton, KA3 3DH (“the Property”)

Parties:

Dr Lachlan McMillan, 95 High Street, Stewarton, Kilmarnock, KA30 5DX (“the Applicant”)

Mr Stephen Murphy, 36 Rigghead, Stewarton, KA3 3DH (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. An application was made under rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a short assured tenancy by the Applicant against the Respondent for the property.
2. The application contained :-
 - A copy of the tenancy agreement,
 - a copy of the AT5,
 - a copy of the Section 33 Notice,
 - a copy of the Notice to Quit,
 - certificate of service by sheriff officers for the notice to quit and the section 33 notice; and
 - Section 11 Notice

3. The Notice of the Hearing had been served on the Respondent by sheriff officers on 5 March 2019.
4. The Applicant appeared on own behalf. The Respondent did not appear. As I was satisfied that the Respondent had been given formal notice of the today's case management discussion I was prepared to proceed in his absence.

Case Management Discussion

5. The Applicant referred me to the papers which had been lodged in support of the application, including the tenancy agreement, AT5, notice to quit, Section 33 notice and certificate of service.

Findings in Fact

6. I found the following facts established:-
7. That there was a tenancy agreement between the Applicant and the Respondent in respect of the property.
8. That it had commenced on 7 November 2016 for an initial period of 6 months until 6 May 2017. The tenancy agreement provided that it would continue on a monthly basis thereafter.
9. The tenancy agreement appeared to have been signed by the parties on 7 November 2016.
10. The AT5 Form was in the prescribed format.
11. The tenancy agreement noted that the tenant acknowledges that they were served with the Form AT5 prior to the creation of the tenancy agreement.
12. The notice to quit and section 33 notices contained the prescribed information and both were dated 24 September 2018, both sought vacant possession as at 6 December 2018. Both provided more than 2 months' notice of vacant possession. A certificate of intimation of these notices by sheriff officers was lodged confirming that the notices had been served on the Respondent on 27 September 2018.

Reasons for Decision

13. Section 33 of the 1988 Act requires me to grant an order for possession under a short assured tenancy, where the tenancy has reached its end; tacit relocation is not operating; no further contractual tenancy for the time being is in existence; and the landlord has given notice to the tenant that they require possession of the house.
14. I was satisfied that a short assured tenancy had been created.

15. I was satisfied with the terms of the section 33 notices and the notices to quit. I was also satisfied that these notices had been served on the Respondent.

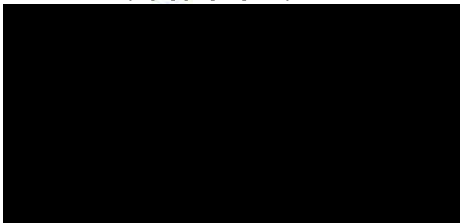
16. I was satisfied that all of the requirements of section 33 had been met and I consider therefore that I am required to grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.

Decision

I grant an order in favour of the Applicant against the Respondent for recovery of possession of the property.

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.



Legal Member/Chair

22. 3. 19

Date