

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 33 of the Housing Scotland
(Scotland) Act 1988**

Chamber Ref: FTS/HPC/EV/19/0189

Re: Property at 1 Whitfield Gardens, Dundee, DD4 0AW (“the Property”)

Parties:

Mr Michael Smith, Mrs Tracy Duncan, 16 St Kilda Road, Dundee, DD3 9LZ (“the Applicant”)

Mr Daniel Hughes, Ms Stephanie June Alexander, 1 Whitfield Gardens, Dundee, DD4 0AW (“the Respondents”)

Tribunal Members:

Ewan Miller (Legal Member)

Decision (in absence of the parties)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant should be granted an Order for Possession for recovery of the Property from the Respondents

Background

The Applicant was the owner of the Property and had let it to the Respondents. The Applicant alleged that the lease had reached its term and sought recovery of possession in terms of s33 of the Housing (Scotland) Act 1988. The Applicant alleged that the Respondents had failed to remove and accordingly applied to the Tribunal on 18 January 2019 seeking recovery of possession.

The Tribunal noted that the Respondents had been advised of the Case Management Discussion (“CMD”) by letter dated 27 February 2019 and that the letter had been correctly and timeously served by Sheriff Officers. The letter confirmed the date, place and time of the CMD and advised that the Tribunal could make a final decision at the CMD in their absence

CMD

The Tribunal held a CMD at Caledonian House, Greenmarket, Dundee at 11.30am on 19 March 2019. The Applicant was not present or represented. The Tribunal checked with the letting agent for the Applicant by phone who stated they had not received their letter of 27 February 2019 (sent only by ordinary post rather than by Sheriff Officer) and apologised for their absence. They confirmed that the Respondents were still in the Property and that the order was still being sought

The Respondents were not present or represented and no submissions had been made by them in response to the Tribunal papers served on them. As noted above, the Tribunal was satisfied that the CMD had been correctly and timeously notified to the Respondents. Notwithstanding the lack of appearance by either party, the Tribunal was satisfied that it had all the relevant papers before it to allow it to reach a decision. The Tribunal was satisfied that it was appropriate to proceed with the CMD, that this was fair procedurally to make a decision.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property;
- The Applicant had let the Property to the Respondents on a Short Assured Tenancy dated 3 October 2016;
- The tenancy end date was 3 April 2017 and it had thereafter been continuing on a month to month basis by tacit relocation;
- In terms of Clause 37 of the lease, the Applicant required to give two months notice to terminate the lease once the lease was tacitly relocating;
- The appropriate s33 notice and Notice to Quit had been timeously served by Sheriff Officers on the Respondents on 12 October 2018 with an ish date of 3 January 2019;
- The Respondents had failed to remove;
- The appropriate s11 homelessness notice had been served

Reasons for Decision

The Tribunal was readily satisfied that it was required to grant the Order for Possession. The Applicant had given the correct notice bringing the lease to an end. The notices had been properly and timeously served by Sheriff Officers on the Respondents. The lease had, therefore, been brought to a contractual end on 3 January 2019. There was no evidence that any tacit relocation was still occurring or that a new contractual tenancy had been entered in to. The Respondents had failed to remove. The Respondents had given no information to justify their staying in the Property. The Tribunal had no reason to question the submissions of the Applicant. The Respondents were in breach and accordingly the Tribunal was obliged to grant the order in terms of s33 of the Housing (Scotland) Act 1988.

Decision

The Tribunal determined that the Applicant should be granted an Order of Possession for recovery 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.

Mr Ewan Miller

Legal Member/Chair

Date

19/3/19