



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/21/0502

Re: No 2 Kellyfield Farm Cottage, Arbroath, DD11 2NY (“the Property”)

Parties:

James Baird Miller, Kellyfield Farm, Arbroath, DD11 2NY (“the applicant”)

Albert Kelly, Leigh Kelly, No 2 Kellyfield Farm Cottage, Arbroath, DD11 2NY (“the respondents”)

Tribunal Members:

Adrian Stalker (Legal Member), Janine Green (Ordinary Member)

Decision (in absence of the respondents)

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

- (1) that the requirements of section 33(1)(a), (b) and (d) of the Housing (Scotland) Act 1988 have been met;**
- (2) that it is reasonable to grant an order for possession;**

therefore the Tribunal granted an order for possession of the Property in favour of the applicant, under section 33 of the Act.

Background

1. By applications made on 25 February 2021, the applicant sought an order for recovery of possession under section 33 of the Housing (Scotland) Act 1988 (“the Act”), and an order for payment of £5,630.00, being rent arrears. The rent arrears application is FTS/HPC/CV/21/0501. Reference is made to the Tribunal’s decision in relation to that case, also dated 27 May 2021.

2. This application, for an order for possession, is made under rule 66 of the schedule to First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). It was submitted on the applicant’s behalf by his agents, Thorntons Law LLP.

3. It should be noted that Thorntons originally submitted an application under rule 65, seeking an order in terms of section 18(4) of the 1988 Act, on ground 8 of schedule 5, on the basis of the respondents being in arrears of rent. However, the sifting legal member pointed out that the AT6 served on the respondents was in the wrong form. Accordingly the applicant’s agents submitted a revised application, under section 33.

4. The parties entered into a written tenancy agreement on 5 and 17 October 2016. The agreed rent was £520 per month, payable monthly in advance.

5. A schedule of documents was attached to the revised application, being:

1. a copy of the Short Assured Tenancy Agreement between the parties;
2. a copy forms AT5 addressed to the respondents dated 3 and 5 October 2016;
3. copy notices to quit, forms AT6, and section 33 notices addressed to the respondents dated 18 August 2020, with Sheriff Officers’ Certificate of Service dated 20 August 2020;
4. copy letters to the respondents dated 3 February 2021, with enclosures;
5. copy letters to the respondents dated 17 February 2021, with enclosures;
6. rent statement dated 25 February 2021;
7. copy notice to the local authority, given under section 19A of the 1988 Act;
8. copy email to the local authority sending the section 19A notice, with delivery receipt.

6. On 15 April 2020, notice of acceptance was granted by a legal member. A Case Management Discussion (“CMD”) was fixed in respect of both applications, for 10am on 27 May 2021. This was intimated by letter to the parties.

7. On 11 May, the applicant’s agents intimated a request to amend the amount of the arrears in application FTS/HPC/CV/21/0501 to £6,670.

The CMD

8. The CMD duly took place, by teleconference call, on 27 May 2021. Mr Kemp solicitor, of Thorntons, appeared on behalf of the applicant.

9. As at 10:10am, neither of the respondents, nor any person appearing on their behalf, had entered the teleconference. Accordingly, the respondents did not appear, and were not represented, at the CMD. The Tribunal members had sight of certificates of citation on both respondents, on 27 April, by Scott & Co, Sheriff Officers. The

respondents have not, at any time, played any active role in the proceedings relating to this application. They have made no representations to the Tribunal, in advance of the scheduled CMD.

10. Under rule 17(4) of the Rules, the First-tier Tribunal may do anything at a CMD which it may do at a hearing, including: hearing the case in the absence of one of the parties (rule 29), and making a decision. In the circumstances, the Tribunal was satisfied, under rule 29, that it was appropriate to proceed with the hearing, in the respondents' absence. Mr Kemp asked the Tribunal to grant an order for recovery of possession, under section 33 of the Act.

11. In support of that motion, he confirmed that the arrears currently stand at £6,670. The respondents initially fell behind in their payments in September 2019. By the time the first Covid-19 lockdown was imposed, in March 2020, the arrears stood at £2,070. The rent account produced by the applicant shows that no payments have been made towards the rent, since November 2020. Although this application is now made under section 33 of the Act, the applicant complied with the pre-action requirements for rent arrears cases under the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. The various requirements were met by the letters of 3 and 17 February, which were issued to the respondents before the application was made.

Section 33 of the 1988 Act

12. This application was made in February 2021. Therefore, amendments made to the 1988 Act by the Coronavirus (Scotland) Act 2020 have effect. As amended, section 33(1) and (2) now read:

33.— Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

- (a) that the short assured tenancy has reached its end;
- (b) that tacit relocation is not operating;

...

- (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house
- (e) that it is reasonable to make an order for possession.

- (2) The period of notice to be given under subsection (1)(d) above shall be—
- (i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;
 - (ii) in any other case, six months.

13. In light of the documents produced, the submissions made by Mr Kemp, and in the absence of any representation by the respondents to the contrary, the Tribunal was satisfied that:

- a) The tenancy contract between the parties was terminated on 24 February 2021, an ish date of the tenancy, by the notices to quit served by the applicant, on 20 August 2020. Therefore the tenancy has reached its ish, and tacit relocation is not operating.
- b) The applicant gave notice to both respondents, on 20 August 2020, that he required possession of the Property on 24 February 2021.
- c) Intimation of the application was timeously made to the local authority under section 19A of the 1988 Act.
- d) Arrears have been accumulating for more than 18 months, and the current balance is £6,670.
- e) Although this application is made under section 33 of the 1988 Act, the applicant complied with the pre-action requirements for section 18 cases.
- f) No information has been provided by the respondents, as to why it would not be reasonable to grant an order in this case.
- g) It is reasonable to make an order for possession.

Decision

14. The Tribunal accordingly granted an order for possession under section 33 of the Housing (Scotland) Act 1988.

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.

[^]
Adrian Stalker

Legal Member

Date: 27 May 2021