

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) Act 1988

Chamber Ref: FTS/HPC/EV/18/2149

Re: Property at 147 Caledonian Road, Wishaw, ML2 8AT (“the Property”)

Parties:

Mr Andrew Prentice, Mrs Margaret Prentice, 22 Hillfoot Crescent, Branchalwood, North Lanarkshire, ML2 8TL (“the Applicant”)

Miss Clair Brown, Mr Ian McNab, 147 Caledonian Road, Wishaw, ML2 8AT (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member)

Decision (in absence of the Respondents)

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

BACKGROUND

1. By lease dated 9 November 2017 the Applicants let the Property to the Respondents. The Landlord in the lease was stated to be Mr Andrew Prentice alone. Mrs Margaret Prentice, however, is joint owner of the Property and attended the Case Management Discussion where she confirmed she was aware of the lease and also the current proceedings and consented to the same;
2. The lease was a short assured tenancy, commencing on 9 November 2017 and expiring on 9 May 2018. A notice in terms of s32 of the Housing (Scotland) Act 1988 (the “1988 Act”) – commonly referred to as a form AT5 – had been served timeously;
3. Immediately after the lease was executed the Respondents were served with a notice to quit and a notice in terms of s33 of the 1988 Act requiring the Respondents to remove from the Property on 9 May 2018;

4. The Respondents did not remove from the Property on that date. A further notice to quit and notice in terms of s33 of the 1988 Act, each dated 7 June 2018, were served on the Respondents. The Notice to Quit dated 7 June 2018 required the Respondents to quit the Property on 9 June 2018. The s33 notice required vacant possession as at 9 August 2018. A covering letter was also forwarded to the Respondents stating possession was required by the landlord as at 9 August 2018;
5. While there was an error in the Notice to Quit dated 9 June 2018 it was of no legal consequence. A valid notice to quit had been served on 9 November 2017, together with a s33 notice. Those notices were both valid and effective;
6. The Respondent Clair Brown had removed herself from the Property, although it was understood she still visited on occasions as the Respondent Ian McNab remained in residence there;

THE CASE MANAGEMENT DISCUSSION

7. The Applicant Andrew Prentice did not attend the Case Management Discussion. The Applicant Margaret Prentice did attend. Both were, however, represented by Mr Alan Shillady of Shillady's estate and Letting Agents, Wishaw. Miss Morag Shillady of Shillady's, Wishaw also attended. Neither Respondent attended. The proceedings had not, in fact, been served on Clair Brown as her current whereabouts were unknown;
8. The Proceedings had been served on Ian McNab. The Tribunal being satisfied that the terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the "FTT Rules") had been complied with proceeded with the Application in terms of Rule 29 of the FTT Rules;
9. It was advised on behalf of the Applicants that Ian McNab was still residing at the Property. Accordingly, an order for eviction was required in relation to him. In relation to Clair Brown, while she had removed herself from the Property, the Applicants were concerned that, if an order was not granted against her, she may return to the Property and claim a right to occupy it in terms of the lease;

FINDINGS IN FACT

10. By lease dated 9 November 2017 the Applicants let the Property to the Respondents.
11. The lease was a short assured tenancy, commencing on 9 November 2017 and expiring on 9 May 2018.
12. On 9 November 2017 the Respondents were served with a notice to quit and a notice in terms of s33 of the 1988 Act requiring the Respondents to remove from the Property on 9 May 2018;
13. The respondent Clair Brown had removed herself from the Property, The Respondent Ian McNab had not removed himself;

REASONS FOR DECISION

14. The Applicants having served a valid notice to quit and s33 notice on the Respondents were entitled to an order for recovery of possession of the Property;
15. While the Proceedings had not been served on the Respondent Clair Brown as her current whereabouts were unknown, considering the information that she had removed herself from the Property, the inevitability of an order for recovery of possession even if she had attended the Case Management Discussion, the genuine concern of the Applicants that she may return to the Property and attempt to resume occupation, and the fact that, having regard to all of the above that it was in the interests of justice to do so, granted an order against both Respondents;

DECISION

The Tribunal granted an order to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property at 147 Caledonian Road, Wishaw, ML2 8AT and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same, said order not to be executed before noon on 31 December 2018

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.

Virgil Crawford

23 November 2018

Legal Member/Chair

Date