

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/18/2536

Re: Property at 30 Buccleuch Road, Sanquhar, DG4 6BX (“the Property”)

Parties:

Mr R Nigel Miller, 17 Dalbeattie Road, Dumfries, DG2 7PF (“the Applicant”)

**Mr Fraser McAurthur, 30 Buccleuch Road, Sanquhar, DG4 6BX (“the
Respondent”)**

Tribunal Members:

Lesley Ward (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) dismissed the application on the basis that the terms of s33 of the
Housing (Scotland) Act 1988 have not been complied with and a s33 notice has
not been served on the respondent.**

This is a case management discussion ‘CMD’ in connection with an application in terms of s33 of the Housing (Scotland) Act 1988, ‘the Act’ and rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’. The application was made by Mr Kenneth Mc Lean solicitor on behalf of Mr Nigel Miller on the 20 September 2018.

The tribunal had before it the following copy documents:

1. Application dated 20 September 2018 and received by the Tribunal on that date.
2. Tenancy agreement.
3. AT5 dated 23 August 2013.

4. Notice to quit dated 10 July 2018.
5. Sheriff Officer's execution of service dated 10 July 2018.
6. S11 letter.
7. Letter from Tribunal to applicant's agent's dated 1 October 2018.
8. Reply from applicant's agents dated 9 October 2018.

Mr McLean attended the tribunal on behalf of the applicant. He was accompanied by Miss McCallan of his firm. The respondent also attended.

Preliminary matters

1. The tribunal noted that there was no s33 notice with the application. This is an essential legal requirement, both in terms of rule 66 but also in terms of s33 of the Act. Without a s33 notice and proof of service of this notice, the application cannot succeed and falls to be dismissed. The applicant's agent does not have the s33 notice and he has not served this notice on the respondent. The applicant's agent's view was that the notice was not required for the sheriff court and accordingly should not be required for the tribunal today. For the reasons noted below the tribunal took a different view. Mr McLean also stated that there are considerable rent arrears for the property although he decided to proceed in terms of rule 66 and not rule 65.
2. The tribunal was unable to ascertain the date of the lease lodged.
3. The tribunal does not have a copy of the title to the property but Mr Mc Lean stated that Mr Miller is the owner of the property.

Reasons

There is no s33 notice with this application and no notice has been served. S33 of the Act provides:

- (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 sheriff shall make an order for possession of the house of he is satisfied-*
 - (a) *That the short assured tenancy has reached its ish*
 - (b) *That tacit relocation is not operating*
 - (c) *That no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and*

(d) That the landlord (or where there are joint landlords, any of them) has given the tenant notice stating that he requires possession of the house.

S33(2) goes on to narrate the period of notice required.

The tribunal's view is that the s33 notice required by s33(1)(d) above is essential. The Tribunal administration wrote to the applicant's agents on 1 October 2018 asking for further information, including the s33 notice. The agents wrote back on 9 October 2018 stating:

We refer to your letter of 1 October 2018 and enclose herewith the papers which you require".

The s33 was not enclosed.

It is possible for a notice to quit to incorporate the information required in a s33 notice and for this to be served in one document. Looking at the wording of the notice to quit here, the notice to quit makes no reference to s33 of the Act. "Stalker" on "Evictions in Scotland" at page 87 that:

There appears to be no reason why the section 33 notice could not be incorporated into the notice to quit so that a single notice will suffice...Say by adding an additional paragraph to the notice to quit: I hereby give you notice under section 33(1)(d) of the Housing (Scotland) Act 1988 that I require possession of the tenancy subjects on the said date".

Although the notice to quit here gives 2 months' notice, it makes no reference to the Act or to s33. A separate document is therefore required.

The tribunal, in accordance with the overriding objective dismissed the application for the foregoing reasons.

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.

Lesley A Ward

27 November 2018

Lesley A Ward Legal Member

Date