



**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/18/2652

Re: Property at 5 Cornhill Street, Newburgh, Fife, KY14 6BN (“the Property”)

Parties:

W & R Sneddon, 4 Knowlea Terrace, Perth, PH2 0HQ (“the Applicant”)

Mr James Cameron, 5 Cornhill Street, Newburgh, Fife, KY14 6BN (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for possession of the property and the ejection of the Respondent from the property.

Background

1. By application dated 4 October 2018 the applicant applied to the Tribunal for an order under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”). In support of the application the Applicant provided a copy of the Short Assured Tenancy Agreement, AT5, Section 33 Notice, Sheriff Officers Execution of Service and Section 11 Notice.
2. By Notice of Acceptance dated 15 October 2018 a legal member with delegated powers accepted the application and a Case Management Discussion was assigned.
3. Intimation of the Case Management Discussion was given to the Applicant by post and to the Respondent by Sheriff Officers.

Case Management Discussion

4. A Case Management Discussion was held on 30 November at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy. It was attended by Mr Reigh Sneddon on behalf of the Applicant. There was no appearance by the Respondent nor any explanation for his non-attendance. The Case Management Discussion proceeded in the absence of the Respondent in accordance with rule 29 of the 2017 Rules.
5. For the Applicant Mr Sneddon referred the Tribunal to the documents submitted along with the application that confirmed there was a short assured tenancy that commenced on 2 March 2017 and ran until 3 September 2017 and from month to month thereafter until terminated by either party giving two months' notice. Mr Sneddon confirmed that the Respondent had acknowledged receipt of the AT5 prior to the commencement of the lease.
6. Mr Sneddon confirmed he had instructed Sheriff Officers to serve a Notice to Quit and Section 33 Notice on the Respondent and referred the Tribunal to the relevant documents submitted along with the application and the Sheriff Officers Execution of Service dated 2 August 2018.
7. Mr Sneddon confirmed he had sent a Section 11 Notice to Fife Council and referred the Tribunal to the document submitted with the application.
8. Mr Sneddon advised the Tribunal that the Respondent had vacated the property but had not returned the keys. He provided the Tribunal with a Council tax demand from Fife Council that indicated the Respondent had vacated the property on 7 November 2018. Mr Sneddon told the Tribunal he had attended at the property and it was empty and there was no electricity left on the pre-payment meter. It was clear the Respondent had removed himself from the property.
9. Although the Respondent had vacated the property he had not returned the keys and the Applicant still wished an order for possession.

Findings in Fact

10. The parties entered into a Short Assured Tenancy that endured from 2 March 2017 until 3 September 2017 and then from month to month thereafter until either party gave two months' notice.
11. The Applicant through Sheriff Officers served a Notice to Quit and Section 33 Notice on the Respondent on 2 August 2018 giving the Respondent until 3 October 2018 to remove from the property.
12. The Respondent did not remove from the property until some time after 3 October 2018.

13. The Respondent did not return the keys of the property to the Applicant.

Reasons for Decision

14. The tribunal was satisfied that there was a Short Assured tenancy in place and that the Applicant was entitled to bring it to an end on giving two months notice. The Tribunal was satisfied that a valid Notice to Quit and Section 33 Notice had been served on the Respondent by Sheriff Officers and that the statutory requirements in terms of Section 33 of the Housing (Scotland) Act 1988 had been met.
15. Although it appeared that the Respondent had removed himself from the property in advance of the Case Management Discussion he had not returned the keys to the property and in the circumstances it was reasonable therefore to grant an order for the possession of the property and the ejection of the Respondent although in practice it may not be required.

Decision

16. The Applicant is entitled to an order against the Respondent for possession of the property and ejection of the Respondent from 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.

Graham Harding

Legal Member/Chair

Date

30 November 2018