

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 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/EV/18/2686

Re: Property at 1/6 Loganlea Terrace, Edinburgh, EH7 6NU (“the Property”)

Parties:

Miss Leigh Anderson, 185 Leith Walk, Edinburgh, EH6 8NX (“the Applicant”)

Miss Gemma McLaughlin, 1/6 Loganlea Terrace, Edinburgh, EH7 6NU (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member)

Decision (in absence of the Respondent)

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

- Background

The Applicant submitted an application dated 9 October 2018 (the Application) to the First-tier Tribunal seeking an Order for Possession in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the Regulations) as well as an award of expenses under Rule 40 of the Regulations. The Case Management Discussion took place on 29 November 2018. The Applicant was represented by a Mr Scott Runciman of Gilson Gray LLP. The Respondent was not present and had not lodged any written representations. The Application was intimated on the Respondent and she was advised that she required to be at the Case Management Discussion or be represented and that the tribunal could make any decision at the Case Management Discussion that it could at a full hearing, including granting the Application, as long as the tribunal had sufficient information in front of it and considered the procedure had been fair.

- The Case Management Discussion

The Applicant's representative moved for the Application to be granted in terms of section 33 of the Housing (Scotland) Act 1988. The Applicant's representative also sought expenses against the Respondent on the basis that there had been unreasonable behaviour on her part by not leaving the Property on expiry of the Notice to Quit and Section 33 Notice.

- Findings in Fact

- 1) That the Applicant and Respondent entered into a tenancy agreement on 26 May 2016.
- 2) That the tenancy between the Applicant and Respondent was a Short-assured Tenancy in terms of section 32 of the Housing (Scotland) Act 1988.
- 3) That the Applicant served a Notice to Quit and Section 33 Notice by sheriff officer on 20 July 2018.
- 4) That the contractual tenancy between the parties was terminated as at 26 September 2018 and no further contractual tenancy is in existence.
- 5) That tacit relocation is not operating.
- 6) That proper notice in terms of Section 33(2)(ii) of the Housing (Scotland) Act 1988 has been given.
- 7) That the Applicant was therefore entitled to an Order for Possession for the Property.
- 8) That there was no unreasonable behaviour in terms of Rule 40 of the Regulations by the Respondent.

- Reasons for Decision

The requirements of section 33 of the Housing (Scotland) Act 1988 had been complied and the underlying tenancy was a Short-assured Tenancy. As such the Applicant was entitled to her Order for Possession.

In terms of the claim for expenses, the requirement of Rule 40 of the Regulations is that a party be guilty of "unreasonable behaviour in the conduct of a case" and that this unreasonable behaviour "has put the other party to unnecessary or unreasonable expense". This is the only basis under which the tribunal can award expenses in favour of one party or the other. In this case the basis of the claim was that the Respondent had not vacated the Property on expiry of the notices. That is not unreasonable behaviour in the "conduct of a case". Further, with tenancies under the Housing (Scotland) Act 1988, even where a contractual tenancy has been terminated, a tenant still has a statutory right to occupy a property under section 16 of the Housing (Scotland) Act 1988 as a statutory assured tenant. As such, there is nothing unreasonable in the Respondent remaining in the Property after the expiry of such notices. No award of expenses was therefore appropriate.

- Decision

To grant an Order for Possession in favour of the Applicant.

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.

Rory Cowan

Legal Member/Chair

29/05/2018
Date