



**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/19/3847

Re: Property at 8 Fraser Avenue, Elgin, Moray, IV30 4EU (“the Property”)

Parties:

**Carmichael Holdings (Scotland) Ltd, c/o CCL Property, 62 High Street, Elgin,
IV30 1BU (“the Applicant”)**

**CCL Group Ltd trading as CCL Property, 62 High Street, Elgin, Moray, IV30
1BU (“the Applicant’s Agent”)**

**Mr Ciprian Purusniuc, residing at 8 Fraser Avenue, Elgin, Moray, IV30 4EU
 (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an order for repossession of the Property
against the Respondent.**

Background

- 1 By application dated 4 December 2019 the Applicant sought an order for repossession against the Respondent under section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The following documents were submitted in support of the application:-
- (i) Copy Tenancy Agreement between the parties dated 25th August 2017 together with Form AT5;
 - (ii) Copy Notice to Quit dated 20th August 2019 giving the Respondent formal notice to quit the Property by 26th October 2019;

- (iii) Copy Notice under section 33(1)(d) of the 1988 Act dated 28 June 2019 intimating that the landlord required possession of the house as at 26th October 2019;
 - (iv) Recorded delivery receipt in respect of the notices at (ii) and (iii) dated 20th August 2019; and
 - (v) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Moray Council and email acknowledging receipt.
- 2 By Notice of Acceptance of Application dated 12th December 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds to reject the application. A Case Management Discussion was therefore assigned for 28th January 2020.
- 3 The application paperwork together with notification of the Case Management Discussion was served on the Respondent on 18th December 2019 by Sheriff Officers who left it in the hands of his wife Maria Florina.

The Case Management Discussion

- 4 A Case Management Discussion took place on 28th January 2020. The Applicant was represented by Michelle Rourke, Lettings Manager and Carly Pickering, one of the owners of CCL Property. The Respondent was personally present. The Legal Member explained the purpose of the Case Management Discussion. She also explained for the Respondent's benefit the effect of the provisions of section 33 of the Housing (Scotland) Act 1988, in terms of which the Tribunal may be obliged to grant an order for repossession of the property if certain criteria were met.
- 5 The Respondent confirmed that he had sought advice from Moray Council regarding his position. He was not looking to challenge the application and was seeking alternative accommodation. He explained that he had experienced financial difficulties and had been made bankrupt, which may impact on his ability to obtain another tenancy. The Legal Member explained that he could seek advice from the Council in this regard, however as the landlord was not seeking to recover possession on rent arrears grounds, those issues would not be relevant to her determination of the application. Ms Pickering advised that she appreciated it had been a difficult time for the Respondent however the Applicant required possession of the property. .

Findings in Fact and Law

- 6 The parties entered into a Tenancy Agreement dated 25th August 2017, the term of which was a period of six months from 25th August 2017 to 26th February 2018.

- 7 In terms of Clause 1.1 of the said Tenancy Agreement the tenancy continued on a monthly basis following the initial term.
- 8 The tenancy was a Short Assured Tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 9 The Respondent has been served with a Notice to Quit terminating the tenancy as at 26th October 2019 and Notice under section 33(1)(d) of the Housing (Scotland) Act 1988 informing them that the Applicant required possession of the property as at that same date. Both Notices were served by recorded delivery on 20th August 2019.
- 10 The Short Assured Tenancy has reached its end as at 26th October 2019. Tacit relocation is not operating.
- 11 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

Statutory provisions

- 12 The relevant statutory provisions to be applied in this case are the following excerpts from the Housing (Scotland) Act 1988:-

32 Short assured tenancies.

(1) A short assured tenancy is an assured tenancy—

(a) which is for a term of not less than six months; and

(b) in respect of which a notice is served as mentioned in subsection (2) below.

(2) The notice referred to in subsection (1)(b) above is one which—

(a) is in such form as may be prescribed;

(b) is served before the creation of the assured tenancy;

(c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and

(d) states that the assured tenancy to which it relates is to be a short assured tenancy.

(3) Subject to subsection (4) below, if, at the finish of a short assured tenancy—

(a) it continues by tacit relocation;

the continued tenancy shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.

(4) Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued tenancy is not to be a short assured tenancy.

(5) Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.

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 shall make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its finish;

(b) that tacit relocation is not operating; and

c)

(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.

(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 two months, that period;

(ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

Reasons for Decision

- 13 The Tribunal was satisfied that it was able to make a decision at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Respondent had attended the Case Management Discussion, had clearly sought advice regarding his position and had advised that he was not seeking to challenge the application. The Legal Member therefore considered that there was no dispute regarding the substantive issues to be determined and therefore considered she was able to determine the application without the requirement for a hearing.
- 14 The Applicant sought recovery of possession under section 33 of the Housing (Scotland) Act 1988. Section 33 can only be relied upon for repossession of a short assured tenancy. The Tribunal was satisfied based on the application paperwork that the tenancy was a short assured tenancy as defined by section 32 of the 1988 Act in that it was for a minimum of six months and a Form AT5 had been given to the Respondent prior to the signing of the

tenancy agreement confirming that the tenancy he was entering into was a short assured tenancy.

- 15 The Tribunal therefore considered the provisions of section 33. The Respondent had been served with a valid Notice to Quit which terminated the tenancy as at 1st September 2019. The Respondent had also been served with at least two months notice stating that the landlord required possession of the house as at that date. Based on the Tribunal's findings in fact, the Tribunal therefore considered that the requirements of section 33 had been met. On that basis it was obliged to make the order for repossession.
- 16 The Tribunal therefore made an order for repossession of the property against the Respondent.

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.


Legal Member/Chair

28/1/20

Date