



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/18/0352

Re: Property at 30 Colthill Road, Aberdeen, AB13 0EF (“the Property”)

Parties:

Mr Mark Olson, F15 Royal Grande, Batam Centre, Batam, Indonesia (“the Applicant”)

Mr Paul William Fraser Gray, 30 Colthill Road, Aberdeen, AB13 0EF (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to refuse the Application for eviction/possession.

This is an application for an order for possession of a property let on a Short Assured Tenancy Agreement. The application was raised under section 33 of the Housing (Scotland) Act 1988.

A case management discussion was held on 18th June 2018. The Applicant was represented at the hearing by his solicitor, Mr James Florance.

The Respondent was also present at the discussion.

The Respondent explained that he continued to occupy the property and that he was not in a position to move out of the property as he had no alternative accommodation at this time.

The Applicant’s solicitor moved the Tribunal to grant an order under s33 of the Housing (Scotland) Act 1988. In particular he sought to argue that all the statutory
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requirements of s33 had been met by the respondent and that, accordingly, the Respondent could not have any defence to the application which had now been raised.

The Tribunal were not satisfied that the Landlord had fully complied with the requirements of s33.

In particular the Tribunal were not satisfied that a valid Notice to Quit had been served upon the Respondent in advance of the date of the Application. Accordingly the Tribunal could not be satisfied that tacit relocation was not operating - as required by section 33(1)(b) of 1988 Act.

Further reasoning in relation to the Tribunal's determination:-

At paragraph 2 of the Tenancy Agreement it was agreed between the parties that the agreement was to be for an initial period of 12 months until 15th September 2017. The same clause provided that, if the lease was not terminated by written notice, it would continue on a month to month basis. Accordingly the ish of the tenancy (after 15th September 2017) was the 15 of each succeeding month.

The Landlord served a notice to quit upon the Respondent dated 21st July 2017. That notice sought to terminate the tenancy agreement as at the 24th September 2017.

24th September 2017 was not an ish of the tenancy agreement. Accordingly the Notice to quit served by the Landlord was not valid, as it did not seek to terminate the lease at an ish.

As no valid notice to quit was served by the Landlord, he cannot rely upon the terms of Section 33 of the 1988 Act.

The Applicant's solicitor requested time to amend the application to include grounds to recover possession of the property in accordance with Ground 1 of schedule 5 of the 1988 Act. The Tribunal refused this application to amend. No notices have been served upon the Tenant in advance of such an application being made to the Tribunal and, in any case, a fresh application would be required to proceed on that alternate statutory basis

The Tribunal determined that the application could not proceed further and should be refused

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.

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Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

A Cowan

Legal Member/Chair

18/6/18

Date