

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 (hereinafter referred to as “the 1988 Act”) for Recovery of Possession of a short assured tenancy

Chamber Ref: FTS/HPC/EV/18/0782

Re: Property at 47 The Bridges, Dalgety Bay, KY11 9XZ (“the Property”)

Parties:

Mrs Carol Burns, C/O Home Lettings Scotland, 4 Polton Road, Lasswade, EH18 1AA (“the Applicant”)

Mr David Coutts, Mrs Deborah Coutts, 47 The Bridges, Dalgety Bay, KY11 9XZ (“the Respondents”)

Tribunal Members:

Karen Kirk (Legal Member)

This Hearing was a Case Management Discussion fixed in terms of Rule 17 of the Procedure Rules and concerned an Application for Recovery of Possession on termination of a short assured tenancy under Section 33 of the Housing (Scotland) Act 1988. The purpose of the Hearing being to explore how the parties dispute may be efficiently resolved. The purpose of the hearing was explained to parties. Parties understood a final decision on the Application could also be made.

Attendance and Representation

The Applicant was represented by, Graham Reid, solicitor, local agent for Gilson Gray LLP

Mr David Coutts, Respondent attended the Tribunal personally without representation.

K Kirk

Preliminary Matters

There were no preliminary matters arising.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988. A request for expenses by the Applicant and referred to in the paper apart to the application was refused under Rule 40 of the Procedure Rules.

Facts Agreed Between Parties

1. Both parties accepted that the Applicant was the heritable proprietor of the Property.
2. Both parties accepted that the AT5 had been served correctly at the outset of the tenancy and that the tenancy was a short assured tenancy.
3. Both parties accepted that the relevant notices were valid and had been served terminating the short assured tenancy at the correct ish.

Facts in Dispute between Parties

1. The Applicant considered that they had incurred unreasonable or unnecessary expense to recover the property due to the conduct of the Respondent. Submissions were made that the Respondents could have left voluntarily and significant time had passed since service of the Notice to Quit.
2. The Respondent disputed the submissions made on behalf of the Applicant. He submitted that the notices themselves say that an Order to eject is required, he was invited to attend the hearing and he undertook the process reasonably in his view.
3. In respect to the Order sought under section 33 of the 1988 Act, the Respondent referred to the law and procedure rules regarding a Private Residential Tenancy and not to the Short Assured Tenancy which was the subject of the proceedings.

Reasons for Decision

1. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property.
2. The Tribunal was satisfied that the tenancy was in terms of Section 32(1) of the 1988 Act, a short assured tenancy for not less than 6 months and in relation to which a prescribed notice namely a valid AT5 had been served before creation of the short assured tenancy. The Respondent accepted that the AT5 had been served correctly at the outset of the tenancy.

K Kirk

3. In terms of Section 33 of the 1988 Act the Tribunal considered that the Short Assured Tenancy had reached its ish. This was accepted by the Respondent.
4. Further the Tribunal was satisfied that no tacit relocation was operating, no further contractual tenancy was in existence and a vaild Notice to Quit had been served on the Respondent terminating the tenancy with the necessary notice given to the Respondent.
5. The Respondent accepted that the relevant notices had been received by him.
6. Accordingly in terms of Section 33 of the 1988 Act the Tribunal granted an order against the Respondent for possession of the Property.
7. The Tribunal did not accept the submission made on behalf of the Applicant that there had been unreasonable behaviour in the conduct of the case by the Respondent and accordingly Rule 40 of the Procedure Rules did not apply and expenses were refused by the Tribunal.

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.

K Kirk

Legal Member/Chair

13/6/18

Date