



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/18/1110

Re: Property at 58/1, Grahams Road, Falkirk, FK2 7JP (“the Property”)

Parties:

Mr Gary Grugan t/a Ochilview Properties, 6 Cauldhame, Falkirk, FK2 7GP (“the Applicant”)

Mr Andrzej Haraszczuk, 58/1, Grahams Road, Falkirk, FK2 7JP (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicant for an order for possession on termination of a short assured tenancy in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The tenancy in question was a Short Assured Tenancy of the Property by the Applicant to the Respondent commencing on 31 December 2011.
2. The application was dated 2 May 2018 and lodged with the Tribunal shortly thereafter. It was not, however, processed in full until after the expiry of the notices referred to below.
3. The application relied upon a Notice to Quit and a notice in terms of section 33 of the Housing (Scotland) Act 1988, both dated 5 March 2018, providing the Respondent with notice (respectively) that the Applicant

sought to terminate the Short Assured Tenancy and have the Respondent vacate, each by 30 May 2018. Evidence of posting of the said notices by Recorded Delivery to the Respondent on 5 March 2018 was provided with the application.

4. Evidence of a section 11 notice dated 1 May 2018 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Falkirk Council was provided with the application.

The Case Management Discussion

5. On 10 August 2018, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at STEP, Stirling, I was addressed by Yuliia Waiss, solicitor at RGM Solicitors, being the agent for the Applicant.
6. There was no appearance by the Respondent. The Applicant's agent stated that no contact had been received by her office or by the Applicant from the Respondent. The Applicant's agent said that she understood the Respondent may have, at points, have left the Property but that his partner and daughter remained present. I noted that the report by the Tribunal's Sheriff Officer (in regard to intimation of the CMD) stated that the Respondent was said to be present as at 10 July 2018. I was advised of no contact received from the Respondent by the Tribunal. I was satisfied in the circumstances to proceed in the absence of the Respondent.
7. The Applicant's agent confirmed that an order for eviction was still sought.
8. I asked the Applicant's agent to confirm the correct name of the Applicant. She confirmed that the sole landlord was Gary Grugan and that he traded as Ochilview Properties. I was satisfied to amend the application to state these details.
9. I asked the Applicant's agent as to whether she could clarify the service details of the Notice to Quit and Section 33 Notice as, within the papers, there was a copy of a returned letter from Royal Mail showing that an attempted service by Recorded Delivery (presumably of one of the notices) had been returned as "Not Called For". She explained that her firm always sends such notices by Recorded Delivery as well as a copy by ordinary first class post. She submitted that this meant that the requirement for postage by Recorded Delivery was satisfied (even where the tenant declined to sign for the envelope, or uplift it from the delivery office) but also ensured that the contents were brought to the tenant's attention (by the ordinary post copy). She believed that further Sheriff Officer's service may have been undertaken by the Applicant himself but did not have any evidence of this.
10. The Applicant's agent confirmed no motion was being made for expenses.

Findings in Fact

11. On or about 30 or 31 December 2011, the Applicant let the Property to the Respondent by lease with a start date of 31 December 2011 and an end date of 30 June 2012, thereafter continuing "on a monthly basis" until terminated ("the Tenancy").
12. The Tenancy was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988 further to the Applicant issuing the Respondent with a notice under section 32 of the 1988 Act (an "AT5") on 30 December 2011, prior to commencement of the Tenancy.
13. On 5 March 2018, the Applicant's agent drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that he was to quit the Property by 30 May 2018.
14. On 5 March 2018, the Applicant's agent drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the Applicant required possession of the Property by 30 May 2018.
15. 30 May 2018 is an ish date of the Tenancy.
16. On 5 March 2018, the Applicant's agents posted each of the notices upon the Respondent by Recorded Delivery, being competent service of same. The Respondent was thus provided with sufficient notice of the Applicant's intention that the Tenancy was to terminate on 30 May 2018.
17. On 2 May 2018, the Applicant raised proceedings for an order for possession with the Tribunal, under Rule 66, the grounds of which being that the Tenancy had reached its ish; that tacit relocation was not operating; that no further contractual tenancy was in existence; and that notice had been provided that the Applicants require possession of the Property all in terms of section 33 of the 1988 Act.
18. On 15 June 2018, the notice period under the notices having expired, the application was accepted by the Tribunal.
19. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Falkirk Council on or around 1 May 2018 on the Applicant's behalf.
20. On 10 July 2018, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 10 August 2018.

Reasons for Decision

21. The application was in terms of rule 66, being an order for possession upon termination of a short assured tenancy. I was satisfied on the basis of the application and supporting papers that the necessary notices had been served with sufficient notice, that the Respondent was extending no defence or dispute to the notices, and the requirements of the 1988 Act had been complied with.
22. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. I was thus satisfied to grant an order for possession.

Decision

23. In all the circumstances, I make the decision to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988 in normal terms.

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.

Joel Conn

Legal Member/Chair

Date

10 August 2018