



Notes on a Case Management Discussion 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/18/2613

Re : Property at 3 Millerhill, Dalkeith, Midlothian EH22 1RZ (“the Property”)

The Parties:-

**Ellen Austin, 9 Glenpeffer Avenue, Aberlady EH32 0UL (“the Applicant”)
represented by Duncan Hamilton, ELP Arbuthnott McClanachan, solicitors, 98
Ferry Road, Edinburgh EH6 4PG**

**Colin Miller residing or formerly residing at 3 Millerhill, Dalkeith, Midlothian
EH22 1RZ (“the Respondent”)**

Tribunal Member:

David Bartos (Legal Member)

Summary of Discussion

- 1. The Applicant was represented by Mr Hamilton, solicitor. There was no appearance by or on behalf of the Respondent. The Tribunal noted that notification of the case management discussion had been given to the Respondent in a letter from the Tribunal dated 9 January 2019 which had been served on him by sheriff officers on 10 January 2019. In these circumstances the Tribunal was satisfied that the Respondent had been given sufficient opportunity to participate in the case management discussion.**

The following facts were not in dispute between the parties:

- 1. The Respondent had entered into a short assured tenancy with the Applicant and her then co-owner of the Property Mrs Mae Cameron dated 24 February 2011. The Respondent had received the AT5 Form before entering into the tenancy.**
- 2. The initial period of the tenancy was from 1 March 2011 to 2 September 2011. Following 2 September 2011 the tenancy had become a month**

long short assured tenancy with the lease being the 2nd day of each month terminable on two months' notice in writing.

3. By disposition dated 30 October 2014 Mrs Mae Cameron disposed her one half *pro indiviso* share to the Applicant. The disposition was drafted by the solicitors J Paris Steele then acting for both the Applicant and Mrs Cameron. Through oversight it was not registered or recorded in the appropriate register by that firm at that time. The date of entry under the disposition was 30 October 2014 albeit that the Respondent was resident in the Property at that time.
4. On 29 June 2018 the Respondent had received a notice from Applicant's solicitors on behalf of the Applicant given under section 33(1). The notice was dated 27 June 2018 and complied with the requirements of section 33.
5. On 29 June 2018 the Respondent had received a notice to quit from Applicant's solicitors on behalf of the Applicant dated 27 June 2018. It is in legally compliant form. It required removal by 2 September 2018 being an end of the lease.
6. On 1 October 2018 the Applicant's solicitors e-mailed a notice under section 11(3) of the Homelessness etc (Scotland) Act 2003 to Midlothian Council
7. The Respondent has not removed from the Property. He has not provided the Applicant with vacant possession. On 3 October 2018 the Applicant applied to the Tribunal for an eviction order.
8. On 1 November 2018 the Applicant's solicitors submitted the said disposition in her favour to the Keeper of the Registers of Scotland for registration in the relevant register.
9. By letter to the Tribunal dated 28 November 2018 Mrs Mae Cameron confirmed that as former joint landlord she was content for the current application to continue.

Submissions

The Applicant's solicitor made two written submissions. The first was received by the Tribunal on 18 January 2019 and the second in an e-mail dated 24 January 2019. The second written submission sought to answer the direction of the Tribunal dated 17 January 2019. There were no written submissions from the Respondent.

At the case management discussion the Applicant's solicitor submitted that the lease was a short assured tenancy and that the Applicant had complied with the requirements of section 33(1) of the Housing (Scotland) Act 1988. While the Applicant was not sole owner of the Property at the time of the notices she had received delivery of the disposition in October 2014 when her solicitor was also acting for her sister Mrs Mae Cameron. She was therefore entitled to terminate the tenancy.

He submitted that no defence had been stated and that applying the overriding objective of the tribunal being among other things to avoid undue delay, the Tribunal should grant the order sought without continuation to a hearing.

Reasons

The Tribunal considered the written submissions which it had received, the oral submissions of the Applicant's solicitor and the documentary evidence submitted by the Applicant's solicitor. It found that it was able to make sufficient findings in fact and that to do so was not contrary to the interests of the parties. It was therefore able to decide the case without a hearing.

The Tribunal was satisfied that evidence had been produced to support the findings in fact set out above. No doubt was cast on that evidence. In those circumstances the Tribunal found that section 33(1) of the 1988 Act had been complied with and that it had no discretion but to grant the order sought without continuation to a further hearing. It could see no benefit to be gained from a further hearing which would cause further delay.

Parties' attention is drawn to the provisions of rule 22 of the schedule to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 in connection with the leading of witnesses or lodging of documents for the hearing.

Outcome

The First-tier Tribunal for Scotland (Housing and Property Chamber) orders possession in favour of the Applicant against the Respondent.

Right of Appeal

In terms of section 46 of the Tribunals (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.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

D Bartos

Legal Member

28 January 2019

Date