



**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/18/3286

Re: Property at 10C Pottery Street, Kirkcaldy, Fife, KY1 3ET (“the Property”)

Parties:

**Kingdom Initiatives Ltd, Saltire Centre, Pentland Court, Glenrothes, KY6 2DA
 (“the Applicant”)**

**BTO Solicitors LLP, 48 St Vincent Street, Glasgow, G2 5HS (“the Applicant’s
 Representative”)**

**Mr Marco Renton, 10C Pottery Street, Kirkcaldy, Fife, KY1 3ET (“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 Respondents.**

Background

- 1 By application received on 10th December 2018 the Applicant sought an order for recovery of possession of the property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant submitted the following documents:-
 - 1 Short Assured Tenancy between the Applicant and Respondent dated 2 October 2015;
 - 2 Form AT5 dated 2 October 2015;

- 3 Section 33 Notice and Notice to Quit dated 26th July 2018;
 - 4 Excerpt Title Sheet FFE95723;
 - 5 Landlord Lease dated 12 May 2014.
 - 6 Notice served upon the local authority under the Homelessness (Scotland) Act 2003
- 2 Following submission of the application a Case Management Discussion was assigned for 13th March 2019. Copies of the application together with notification of the Case Management discussion were subsequently served upon the Respondents by Sheriff Officers.

The Case Management Discussion

- 3 The Case Management Discussion took place on 13th March 2019 at Fife Voluntary Action, Kirkcaldy. Ms Ann Oliver appeared as local agent for the Applicant's Representative. The Respondent was personally present.
- 4 Ms Oliver advised that her client sought recovery of possession under section 33 of the Housing (Scotland) Act 1988. A valid Notice to Quit terminating the tenancy as at the ish date together with notice under section 33(1)(d) of the Act had been served on the Respondent. The provisions of section 33 had therefore been met. The Tribunal was obliged to grant repossession.
- 5 The Respondent advised that he had been unaware of the Applicant's intentions regarding the property. He had spoken to their office following receipt of the aforementioned notices and had been told not to worry about it. He had understood the tenancy was continuing on a monthly basis. He asked for further time to seek legal advice.

Findings in Fact

- 6 The Applicant and the Respondent entered into a Tenancy Agreement dated 2 October 2015 in respect of the Property, the term of which was 16th September 2015 to 28th March 2016 and monthly thereafter.
- 7 The tenancy was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 8 On 26th July 2018 the Respondent was served with a Notice to Quit terminating the tenancy as at 28th September 2018 and Notice intimating that the Landlord required possession of the house. Both Notices were served by Sheriff Officers.

9 The tenancy has reached its end as at 28th September 2018. Tacit relocation is not operating. There is no further contractual tenancy in existence.

Reasons for Decision

10 In this case the Applicant seeks an order for repossession of a short assured tenancy under section 33 of the Housing (Scotland) Act 1988

11 Section 33(1) of the Housing (Scotland) Act 1988 provides as follows:-

“(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;*
- (c)and*
- (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.”*

12 The Tribunal was satisfied that a valid Notice to Quit had been properly served on the Applicant which terminated the contractual tenancy between the parties as at 28th September 2018. Accordingly tacit relocation was not operating. Whilst the Respondent had mentioned verbal discussions with the Applicant following receipt of the notices, these did not in the view of the Tribunal amount to a further contractual tenancy having been entered into. Accordingly the Tribunal was satisfied that no further contractual tenancy was in existence. The Respondent had also been given notice that the Applicant required possession of the Property. It was not disputed by the Respondent that he had received both notices.

13 Whilst the Tribunal had sympathy for the position outlined by the Respondent, it was conscious that the provisions of section 33 offered no discretion in its determination of the application. It was clear from the documentation before the Tribunal that the provisions of section 33 had been met. The Tribunal did not consider therefore that there would be any benefit to the Respondent in a deferral for legal advice to be sought. There being no dispute regarding the relevant facts of the case, the Tribunal considered that it was able to make sufficient findings to determine the case without a hearing and that to do so would not be prejudicial to the interests of the parties.

- 14 However having considered the verbal submissions from the Respondent the Tribunal determined it would be reasonable under Rule 16A(d) of the First-tier Tribunal (Housing and Property Chamber) Rules of Procedure 2017 as amended to delay execution of the order for a period of six weeks to give the Respondent sufficient time to vacate the property.
- 15 The Tribunal therefore determined to make an order for repossession under section 33 of the Housing (Scotland) Act 1988 and delayed execution of the order for a period of six weeks.

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.

R O'Hare

13 March 2019

Legal Member/Chair

Date