

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

Chamber Ref: FTS/HPC/EV/19/0240

Re: Property at 4 St Serfs Place, Dysart, Fife, KY1 2SY (“the Property”)

Parties:

Mr Girish Patel, 1 Cornwall Road, Hatchend, Pinner, HA5 4LP (“the Applicant”)

Mr Alan Carmichael, 4 St Serfs Place, Dysart, Fife, KY1 2SY (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for repossession of the Property under Section 33 of the Housing(Scotland) Act 1988 be granted. The Order will be issued to the Applicant after expiry of 30 days mentioned below in the right to appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and read that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same

Background

1. By application dated 22 January 2019 the Applicant applied to the First –tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession of the Property. The application was made in terms of Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the Regulations).

2. The application form was accompanied by copies of the following:-
 - a. a short assured tenancy agreement between the parties in relation to the Property dated 28 and 29 September 2017 ("Tenancy Agreement").
 - b. a Form AT5 in respect of the Property from the Applicant's agent addressed to the Respondent dated 28 September 2017 and countersigned by the Respondent on the same day (Form AT5)
 - c. a Notice to Quit addressed to the Respondent dated 26 October 2018 ("Notice to Quit")
 - d. a Notice under Section 33 of the Housing (Scotland) Act 1988 dated 29 October 2018 ("Section 33 Notice")
 - e. Sheriff Officer's Certificate of Service dated 31 October 2018 (Sheriff Officer's Certificate of Service) and;
 - f. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 dated 22 January 2019 ("Section 11 Notice")
3. The Tribunal noted the Application whilst made under Rule 65 in relation to recovery of possession of an assured tenancy was not accompanied by the mandatory documents. The Tribunal accordingly wrote to the Applicant's Representative on 6 February 2019 to clarify whether he wished to amend the Application to proceed under Rule 66. However he advised that he would still like to proceed under Rule 65.
4. Notwithstanding this, a notice of acceptance of the Application was issued by the Tribunal to the Application on 20 February 2019 under Rule 9 of the Regulations.
5. On 7 March 2019 the Tribunal enclosed a copy of the Application and invited the Respondent to make written representations to the application by 25 March 2019. The paperwork also advised both parties that a Case Management Discussion would proceed under Rule 17 of the Regulations on 29 March 2019. The paperwork was served on the Respondent by David Garry Forbes Sheriff Officer on 8 March 2019.
6. The Respondent did not make any written representations by 25 March 2019.
7. The Case Management Discussion proceeded in absence of the Respondent on 29 March 2019. The Applicant was represented by Mark Macdonald of Fife Letting Service ("the Applicant's Representative")
8. During the course of that Case Management Discussion the Applicant's Representative requested that the Application be amended so as to be brought in terms of Rule 66, rather than Rule 65 of the Regulations. The Tribunal allowed the amendment and assigned a further Case Management Discussion for 7 May 2019.

9. On 17 April 2019 the Tribunal advised the Respondent that a further Case Management Discussion would proceed under Rule 17 of the Regulations on 7 May 2019. The paperwork was served on the Respondent by Ian Wylie, Sheriff Officer on 23 April 2019.

Case Management Discussion

10. The Tribunal proceeded with the Case Management Discussion on 7 May 2019. The Applicant's Representative was in attendance. There was no appearance by or on behalf of the Respondent.
11. The Tribunal had before it the Tenancy Agreement, the AT5, the Notice to Quit, the Section 33 Notice, the Sheriff Officer's Execution and the Section 11 Notice.
12. The Applicant's Representative confirmed he was asking the Tribunal to grant an order for eviction under Section 33 of the Housing (Scotland) Act 1988.
13. The Tribunal considered the Short Assured Tenancy and the AT5 and noted that the tenancy commenced on 2 October 2017 to 2 April 2018 and was continuing on a monthly basis.
14. The Tribunal also considered the Notice to Quit and the Section 33 Notice bringing the contractual tenancy to an end on 2 January 2019.

Findings in Fact

15. The Applicant is the heritable proprietor of the Property at 4 St Serfs Place, Dysart, Fife, KY1 2SY
16. The Applicant let the Property to the Respondent under a Short Assured Tenancy Agreement dated 28 and 29 September 2017 with a start date of 2 October 2017 until 2 April 2018. The tenancy continued on a monthly basis thereafter. The Respondent is the tenant of the Property.
17. On 31 October 2018 by way of Sheriff Officers the Applicant served a Notice to Quit terminating the tenancy on 2 January 2019,
18. On 31 October by way of Sheriff Officers the Applicant served a Notice in terms of Section 33 of the Housing (Scotland) Act 1988 indicating to the Respondent that he intended to take possession of the Property on 2 January 2019.
19. There was no further contractual tenancy ion existence between the parties.
20. The Respondent continues to reside in the Property having failed to vacate on 2 January 2019.

Reasons for Decision

21. The Tribunal considered the issues set out in the amended application and the submissions of the Applicant's Representative. The Tribunal concluded the applicant was entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988.
22. The statutory provisions of the Housing (Scotland) Act 1988 had been met namely that –
- I. The Short Assured Tenancy had reached its ish(termination date) on 2 January 2019;
 - II. The contractual tenancy was not continuing as the Notice to Quit having been validly served on 31 October 2018 brought the contractual Short Assured Tenancy to an end on 2 January 2019;
 - III. No further contractual tenancy agreement was in existence; and
 - IV. That the Applicant had given the Respondent at least 2 months' notice in terms of Section 3 of the Housing(Scotland)Act 1988 on 31 October 2018 stating that he required possession of the Property on 2 January 2019.

Decision

23. In terms of Section 33 (1) of the Housing (Scotland) Act 1988 the Tribunal shall make an Order for possession where it is satisfied that the statutory terms of Section 33 have been met. Accordingly, the Tribunal found the Applicant was entitled to an order for possession of the Property and accordingly granted the Order sought.

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.

S Evans

Legal Member/Chair

Date

7 May 2019