



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/19/3787

Re: Property at 29 Overton Road, Kirkcaldy, Fife, KY1 2DX (“the Property”)

Parties:

Scotia Homes Limited, Balmacassie, Ellon, Aberdeenshire, AB41 8QR (“the Applicant”)

Mr Malcolm Milne, 29 Overton Road, Kirkcaldy, Fife, KY1 2DX (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

Background

By application, received by the Tribunal on 25 November 2019, the Applicant sought an Order for Possession under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”).

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties for an initial period from 15 May 2015 to 14 November 2015 and month to month thereafter until terminated by either Party giving 28 days’ written notice to the other.

The application was also accompanied by copies of a Notice to Quit, dated 27 February 2019, requiring the Respondent to vacate the Property by 14 May 2019, and a Notice given under Section 33 of the 1988 Act, dated 4 September 2019, advising that proceedings would not be raised before 12 November 2019. The Applicant provided the Tribunal with Confirmation of Posting of the Notice to Quit and Track and Trace evidence dated 19 March 2019, of its being returned to sender as undelivered and with evidence of service, on the Respondent, by sheriff officer of,

inter alia, a Section 33 Notice, on 5 September 2019. The Section 33 Notice to which the proof of service related was dated 4 September 2019 and required the Respondent to remove from the Property on or before 12 November 2019.

On 23 December 2019, the Applicant provided the Tribunal with a copy AT5 Notice dated 14 May 2015 and acknowledged by the Respondent on 15 May 2015.

On 4 February 2020, the Tribunal issued a Direction, requiring the Applicant to provide proof of service of the Notice to Quit, or written submissions in support of the application with reference to any authorities on which the Applicant wished to rely.

On 17 February 2020, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 9 March 2020. The Respondent did not make any written representations to the Tribunal.

On 19 February 2020, the Applicant's solicitors, Laurie & Co LLP, Aberdeen provided the Tribunal with copies of relevant Sections of the Ordinary Cause Rules 1993. Rule 34.8 states that a Notice given under Section 34, 35, 36, 37 or 38 of the Sheriff Courts (Scotland) Act 1907 (which relates to notices of removal) may be given by posting the notice by registered post or the first class recorded delivery service. They contended that, as no specific or equivalent rule relating to the service of a Notice to Quit appeared in the Tribunal's procedural Regulations, the rule which had applied in sheriff court cases prior to jurisdiction being transferred to the Tribunal, should be taken to apply. They also provided the Tribunal with a Certificate of Service of the Notice to Quit, by David Bryce of Your Move, Bathgate on 27 February 2019, by posting a copy by First Class Signed for Post.

Case Management Discussion

A Case Management Discussion was held at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy, on the afternoon of 18 March 2020. The Applicant was represented by Ms Linda Fyffe of Laurie & Co. The Respondent was present and was accompanied by his father, Mr Norman Milne. Ms Fyffe asked the Tribunal to accept the authority provided in their representations of 19 February 2020 as establishing that the Notice to Quit had been validly served. The Ordinary Cause Rule stated that it had to be posted. It did not state that evidence of receipt was necessary. The Respondent confirmed that he had, in fact, received the Notice to Quit by ordinary post.

Reasons for Decision

Rule 17 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case management Discussion which it may do at a Hearing. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Section 33 of the 1988 Act states that the Tribunal shall make an Order for Possession of a house let under a Short Assured Tenancy if it is satisfied that the tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence and that the landlord has given to the tenant notice stating that he requires possession of the house.

The Tribunal accepted the argument made on behalf of the Applicant that proof of posting by First Class Track and Trace was sufficient to establish service of a Notice to Quit and that the Ordinary Cause Rules did not specify that proof of receipt was

required. The Tribunal had seen proof of such posting. The Tribunal also noted that the Respondent had confirmed having received the Notice to Quit sent by ordinary post

The tribunal was satisfied that the Short Assured Tenancy had reached its end, that, by service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence between the Parties and that the Applicant had served the Notice required by Section 33 of the 1988 Act. Accordingly, the requirements of Section 33 had been met and the Tribunal was bound to make an Order for Possession of the Property.

Decision

The Tribunal determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

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.

Mr George Clark

Legal Member/Chair

18/03/2020

Date