



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 (Act)

Chamber Ref: FTS/HPC/EV/19/0364

Re: Property at Howe, Harray, Orkney, KW17 2JR (“the Property”)

Parties:

Mr Graham Henry, Ms Alexis Henry, Howe Farm, Harray, Orkney (“the Applicant”)

Aegis Archeology Limited, Ms Marie-Clair Rackham-Mann, 16 Manor Road, Folkeston, Kent, CT20 2SA; Howe, Harray, Orkney, KW17 2JR (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction/recovery of possession be granted.

Background

This is an application under section 33 of the Act and Rule 66 of the Tribunal Procedure Rules for recovery of possession/eviction following upon termination of a short assured tenancy (**SAT**).

The case had called for a CMD on 1 May 2019 at which the issues had been identified and Parties Directed to lodge further productions, witnesses and statements. A Hearing was fixed on those issues for 25 June 2019.

The Tribunal had regard to the following documents:

1. Application received 4

3. Notice to Quit;
4. AT6;
5. Proof of Service of Notices;
6. AT5;
7. SAT;
8. Section 11 Notice;
9. Respondents Written Submissions and Productions;
10. Applicants' Submissions and Productions;
11. Title Deeds to the Property.

Hearing

The Applicants appeared in person and were represented by their solicitor Ms Sutherland. The Respondent did not appear and was not represented. The Tribunal delayed the commencement of the Tribunal to see if the Respondent would appear. The Tribunal also checked whether there had been any contact from the Respondent with the Tribunal Administration.

The Tribunal were satisfied that the Respondent had notification of the Hearing and that she had neither appeared nor made any contact with the Tribunal Administration. The Tribunal considered that it was in accordance with the overriding objective to proceed with the Hearing in the Respondents absence.

The Primary point for consideration was the application under section 33. The Applicants submitted that the order should be granted and the Tribunal had no discretion.

The Tribunal heard evidence from Mr Henry to the effect that he never agreed to extend the SAT beyond 4 October 2018 as had been claimed by the Respondent.

The Tribunal adjourned to consider the evidence with regard to the section 33 application.

The Tribunal in so far as was material made the following findings in fact:

1. The Parties entered into an SAT on 4 September 2016;
2. AT5 had been served 1 September 2016;
3. Section 33 Notice had been validly served on the Respondents dated 16 July 2018;
4. Notice to Quit had been validly served on the Respondents dated 16 July 2018;
5. AT6 had been validly served on the Respondents dated 16 July 2018;
6. Royal Mail track and trace confirmed receipt of the Notices on 23 July 2018;
7. The SAT had been validly terminated on 4 October 2018;
8. Mr Henry had not agreed to verbally extend the SAT beyond 4 October 2018;
9. Tacit relocation was not operating.

The Tribunal accepted the uncontested evidence of Mr Henry to the effect that he had not agreed verbally to extend the SAT after 4 October 2018.

As all of the paperwork had been appropriately served on the Respondents the Tribunal had no discretion other than to grant the order for eviction/recovery of possession sought in terms of section 33.

The Decision of the Tribunal was unanimous.

Decision

The Tribunal granted the order for recovery of possession/eviction.

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 sent to them.

Alan Strain

Legal Member/Chair

25 June 2019
Date