



**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/21/0707

**Re: Property at 244 Kintyre Avenue, Linwood, Paisley, PA3 3JD (“the
Property”)**

Parties:

**Mr Stephen Dennis, Mrs Mary Dennis, 1 Carisbrooke Court, New Milton,
Hampshire, BH25 5US (“the Applicants”)**

**Mr Paul Denniston, 244 Kintyre Avenue, Linwood, Paisley, PA3 3JD (“the
Respondent”)**

Tribunal Members:

Joel Conn (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

1. This is an application by the Applicants for an order for possession on termination of a short assured tenancy in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The tenancy in question was a Short Assured Tenancy of the Property by the Applicants to the Respondent commencing on 2 July 2007.
2. The application was dated 19 March 2021 and lodged with the Tribunal on that date.
3. The application relied upon a Notice to Quit and a notice in terms of section 33 of the Housing (Scotland) Act 1988, both dated 17 February 2020, providing the Respondent with notice (respectively) that the Applicants sought to terminate

the Short Assured Tenancy and have the Respondent vacate the Property. The date specified in both notices was 2 July 2020. Evidence of service of the said notices upon the Respondent by a Sheriff Officer, instructed for the Applicants, on 5 March 2020 was provided to the Tribunal.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Renfrewshire Council on 19 March 2021 was provided with the application.

The Hearing

5. On 20 May 2021, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber by remote telephone conference call, I was addressed by George Reynolds, of Smart Move Estate Agents (Scotland) Ltd, representative for the Applicants, and by the Respondent himself.
6. The Applicant’s agent confirmed that the application for eviction was still insisted upon. No order for expenses was sought.
7. The Respondent stated that he did not oppose the application and expressed that he was “happy” to be evicted as he held the Property “was unsafe”. He made reference to having been in contact with the local authority both in regard to Environmental Health and the Applicants’ registration as landlords. He also referred to having a long standing dispute with the Applicants’ representative on repairs and implied that he had withheld rent further to the dispute. He further complained of earlier communications with the Applicants’ representative where he thought the language used by the representative was not appropriate.
8. All of this was disputed by the Applicants’ representative. He referred to a shortfall in arrears (over and above payments from benefits) arising each month since October 2019. In regard to the notices being issued in February 2020 and expired in July 2020, he explained that the Applicants had attempted to “work with” the Respondent during the pandemic but, when the Respondent was uncooperative in early 2021, instructions were received to raise the application. Further, the Applicants’ representative made reference to the Respondent refusing access to the Property for inspections, and to the Respondent using inappropriate language in communications with him. All of this was disputed by the Respondent.
9. Though all of the above allegations regarding rent, repairs, access, and letting agent conduct may be relevant for other applications within the Tribunal’s jurisdiction, no such applications were before me today and neither party stated that they had raised any such applications. I note them only as background. At the CMD, along with noting that parties disputed each other’s position, I made clear to the parties that I was not considering these matters further in regard to this application. After reviewing all the disputes between the parties, I asked the Respondent whether he remained satisfied to see an order for eviction pass against him and he confirmed that he was.

Findings in Fact

10. On 2 July 2007, the Applicants let the Property to the Respondent by lease with a start date of that date “for the term of 6 months” and, in term of clause 3.20, thereafter continuing “on a monthly basis” (“the Tenancy”).
11. The Tenancy was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988 further to the Applicants issuing the Respondent with a notice under section 32 of the 1988 Act (an “AT5”) on 2 July 2007, prior to commencement of the Tenancy.
12. On 17 February 2020, the Applicants’ letting agent, Smart Move Estate Agents (Scotland) Ltd, drafted a Notice to Quit in correct form (albeit utilising an old wording of the notes, still referring to the court and not this Tribunal) addressed to the Respondent, giving the Respondent notice that the Applicants wished him to quit the Property by 2 July 2020.
13. On 17 February 2020, the Applicants’ letting agent, Smart Move Estate Agents (Scotland) Ltd, drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the Applicants required possession of the Property by 2 July 2020.
14. 2 July 2020 is an ish date of the Tenancy.
15. On 5 March 2020, the Applicants’ letting agent, Smart Move Estate Agents (Scotland) Ltd, competently served each of the notices upon the Respondent by instructing service of them upon the Respondent by Sheriff Officer. The Respondent was thus provided with sufficient notice of the Applicants’ intention that the Tenancy was to terminate on 2 July 2020.
16. On 19 March 2021, the notice period under the notices having expired, the Applicants raised proceedings for an order for possession with the Tribunal, under Rule 66, the grounds of which being that the Tenancy had reached its ish; that tacit relocation was not operating; that no further contractual tenancy was in existence; and that notice had been provided that the Applicant required possession of the Property all in terms of section 33 of the 1988 Act.
17. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Renfrewshire Council on or around 19 March 2021 on the Applicants’ behalf.
18. On 21 April 2021, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 20 May 2021 and the details for dialling into the conference call.

Reasons for Decision

19. The application was in terms of rule 66, being an order for possession upon termination of a short assured tenancy. I was satisfied on the basis of the application and supporting papers that the necessary notices had been served with sufficient notice, the Respondent was extending no defence or dispute to the notices, and thus the requirements of the 1988 Act had been complied with. In any event, the Respondent confirmed that he consented to the eviction. The notices all predate the temporary legislation under the current pandemic and so do not require to be interpreted in light of such legislation.
20. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. I was thus satisfied to grant an order for possession.

Decision

21. In all the circumstances, I make the decision to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988 in normal terms.

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.

J Conn

20 May 2021

Legal Member/Chair

Date