



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 (“1988 Act”)

Chamber Ref: FTS/HPC/EV/21/0806

Re: 66 Brankston Avenue, Stonehouse, Larkhall, ML9 3JF
 (“the Property”)

Parties:

**Mr Alan Robb and Mrs Kirstin Robb, 62 Rotary Way, Thatcham, RG19 4SA
 (“the Applicants”)**

**Ms Michelle McAuley, 66 Brankston Avenue, Stonehouse, ML9 3JF
 (“the Respondent”)**

Tribunal Members:

Pamela Woodman (Legal Member) and Leslie Forrest (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/EV/21/0806 took place at 2pm on Tuesday 1 June 2021 by teleconference call (“**the CMD**”). The Applicants were not present at the CMD but were represented by Heather Fraser of The Property Store (“**Applicant’s Representative**”). The Respondent was not present and was not represented at the CMD. The clerk to the Tribunal was Craig Gemmell.

Decision

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

BACKGROUND

1. An application was made to the Tribunal under section 33 of the 1988 Act. The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“**2017 Regulations**”). More

specifically, the application was made in terms of rule 66 (*Application for order for possession upon termination of a short assured tenancy*) of the HPC Rules.

2. The order sought was an order for possession of the Property.
3. The application was dated 30 March 2021, was submitted by the Applicant's Representative and was accompanied by copies of the following:
 - a. Lease between the Applicants and the Respondent in respect of the Property dated 26 May 2015 and 10 June 2015 ("**Tenancy Agreement**");
 - b. Form AT5 addressed to the Respondent dated 26 May 2015 and countersigned by the Respondent on 10 June 2015 ("**Form AT5**");
 - c. E-mail from the Applicants dated 24 March 2021 authorising Heather Fraser of The Property Store, as the managing agents in respect of the Property, to represent them in any proceedings regarding the termination of the tenancy;
 - d. Notice to quit addressed to the Respondent dated 17 September 2020 and noting that the Applicant was being given formal notice to quit the Property "by 6th November 2020" ("**Notice to Quit**");
 - e. Section 33(1)(d) notice addressed to the Respondent, given on behalf of the Applicants, dated 17 September 2020 and noting that vacant possession was required "as at 20th March 2021", that the "tenancy will reach its termination date as at that date" and that the Applicant was "required to remove from the Property on or before 20th March 2021" ("**Section 33 Notice**");
 - f. Section 11 notice to South Lanarkshire Council dated 30 March 2021 ("**Section 11 Notice**"), but which stated that the legislation under which proceedings were being notified was section 36(6A) of the Housing (Scotland) Act 2001;
 - g. Post Office Ltd certificate of posting dated 17 September 2020; and
 - h. Printout from Royal Mail website of proof of delivery as at 10.54am on 18 September 2020 to MCAULEY.
4. A notice of acceptance of the application was issued by the Tribunal dated 9 April 2021 under rule 9 of the HPC Rules ("**Notice of Acceptance**"), which confirmed that the application paperwork had been received by the HPC on 30 March 2021.
5. The Tribunal Members had received a copy of the certificate of citation from Scott & Co (sheriff officers) which confirmed that the letter with enclosures from the Tribunal dated 27 April 2021 had been served on the Respondent on 28 April 2021. This letter notified the Respondent of the date and time of the CMD, requested written representations by 18 May 2021 and enclosed a copy of the application.

6. At the commencement of the CMD, the Applicant's Representative confirmed that she was not aware whether or not the Respondent continued to be in occupation of the Property because the Respondent did not keep in touch and did not answer calls. However, she confirmed that the keys to the Property had not been returned and that, in March 2021, the council confirmed that the Respondent was still in occupation.
7. The Tribunal was satisfied, on the balance of probabilities, that the Respondent had been provided with proper notification of the CMD and so it could proceed, notwithstanding her absence.
8. The Tribunal Members received confirmation on 25 May 2021 from the Tribunal's administration team that the Respondent had not provided any written representations.
9. The Tribunal noted that the Applicants were the registered proprietors of the Property (title number LAN81114) and the registered landlords of the Property.
10. The Tenancy Agreement stated that:
 - a. It was a short assured tenancy and that a Form AT5 was served prior to the commencement of the tenancy;
 - b. The date of entry was 5 August 2015 ("**Date of Entry**");
 - c. The expiry date of the initial term was 6 February 2016 ("**Original Expiry Date**"); and
 - d. If not terminated by either party as at the Original Expiry Date, then the tenancy agreement was to continue month to month after the Original Expiry Date "until terminated by prior written notice in accordance with the provisions of this lease given by either party to the other. The minimum notice to be given by a Landlord shall be in accordance with statutory provisions in force from time to time. The minimum notice to be given by the Tenant shall be two months. If the Landlord gives notice in accordance with this clause, then notice shall be given by Recorded Delivery Post or by Sheriff Officers" (clause 2 of Tenancy Agreement).
11. This decision arises out of the CMD.

PROCEEDINGS

12. The Applicant's Representative was asked to explain how the date on which possession was required (namely 20 March 2021) in the Section 33 Notice had been calculated.
13. The Applicant's Representative explained that advice had been taken from the Scottish Association of Landlords, which advised that the date for recovery of possession should be a date which was "6 months plus a few days" after the date of service of a section 33 notice. She also noted that the advice received was that

a notice to quit required to expire on an ish date but that the date for recovery of possession in a section 33 notice did not require to be an ish date.

14. When it was put to her, it was accepted by the Applicant's Representative that it could be confusing for a tenant to be sent two notices at the same time with different dates for quitting / removing from the Property.
15. In response to a question, the Applicant's Representative noted that the Respondent had been a tenant for some time (since 5 August 2015 according to the Tenancy Agreement), that there had previously been some social work involvement historically (and it was not known whether or not that continued) and that the Respondent had a 4 or 5 year old child living with her.

FINDINGS OF FACT

16. The Form AT5 appeared on the face of it to be valid and to have been served before the creation of the tenancy agreement. The term of the tenancy was for a "term of not less than six months". Therefore, the Tribunal was satisfied, on the balance of probabilities, that the tenancy was a short assured tenancy as defined in section 32 of the 1988 Act.
17. The Notice to Quit brought the contractual tenancy to an end on a possible ish date (namely 6 November 2020), allowed for an adequate period of notice and contained the information prescribed in The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988. Accordingly, the Tribunal was satisfied that it met the requirements to be a valid notice to quit.
18. The Tribunal found that, whilst the Section 33 Notice gave 6 months' notice of the Applicant requiring possession of the Property from the Respondent, the date on which recovery was stated as being required to be given (namely 20 March 2021) was not a possible ish date and so the tenancy did not, to use the language in the Section 33 Notice, "reach its termination date" on that date as that date was in the middle of a monthly lease period. The next ish date (being the date on which the tenancy would reach "its finish") following the expiry of the 6 month notice period would have been 6 April 2021.
19. The Tribunal was satisfied, on the balance of probabilities, that the Notice to Quit and Section 33 Notice had been validly served on the Respondent.

REASONS FOR DECISION

20. Section 33(1) of the 1988 Act (as amended from 7 April 2020 and currently in force) provides that "...the First-tier Tribunal may 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.

- 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; and
- e. that it is reasonable to make an order for possession.”

21. The Tribunal was satisfied, on the balance of probabilities, that tacit relocation was not operating (as a result of the service, and expiry of the period of notice under, the Notice to Quit), that the Respondents had been given notice that the Applicant required possession of the house (as a result of the service, and expiry of the period of notice under, the Section 33 Notice, albeit not expiring on an ish date) and that it would be reasonable in the particular circumstances of this case to grant an order for possession.
22. In considering whether or not it would be reasonable to grant an order for possession, the Tribunal took into account that the Respondent had not engaged with the Tribunal in relation to this case, had not raised any objection to the application for the order for possession, and had (on the evidence of the Applicant's Representative, which appeared to the Tribunal to be credible and honest) not engaged with the Applicant's Representative in relation to the tenancy for a significant period of time and there was no reason to believe that this would change.
23. The Tribunal also considered that it may grant the order and that it was reasonable to do so, notwithstanding that the date for recovery of possession in the Section 33 Notice was not an ish date. This was in light of the overriding objective of the Tribunal (as set out in HPC Rule 2). The Tribunal did not consider that it would be just or proportionate to reject the application for that reason (and so require the Applicant to serve a fresh section 33 notice and wait a further 6 months before being entitled to apply for an order for possession) when the Applicant's Representative had sought advice, the Respondent had received a period of 6 months' notice, 6 April 2021 (the first possible ish date after 20 March 2021) was a date in the past and a period of over 8 months had now passed since the Notice to Quit and Section 33 Notice had been served.
24. The Tribunal was satisfied, on the balance of probabilities, that the spirit and intent of the Coronavirus (Scotland) Act 2020 (and related legislation) with regard to the introduction of the extended notice periods had been met, even if the date for recovery of possession in the Section 33 Notice was not an ish date. Accordingly, the Respondent was being afforded the protection intended by that legislation and so the Tribunal did not perceive that detriment would be caused to the Respondent as a result of the Section 33 Notice not having specified an ish date.

DECISION

25. The Tribunal decided that an order be granted against the Respondent for possession of the Property under section 33 of the 1988 Act.
26. The order referred to in the preceding paragraph was intimated orally to the Applicant's Representative during the CMD.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

Pamela Woodman

1 June 2021

Legal Member (chair)

Date

Pamela Woodman