

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/18/1098

Re: Property at Rossie Priory, Inchtute, PH14 9SG (“the Property”)

Parties:

Mrs Caroline Best, Rossie Home Farm, Estate Office, Inchtute, PH14 9SH (“the Applicant”)

Dr Peter Dymoke, Mrs Beth Dymoke, Rossie Priory, Inchtute, PH14 9SH (“the Respondents”)

Tribunal Members:

Andrew Cowan (Legal Member) and Robert Buchan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property.

Background

The Applicant submitted an application seeking an order to evict the Respondents from the property at Rossie Priory, Inchtute, PH14 9SG. The Tribunal intimated the application to the parties by letter of 25th July 2018 and advised them of the date, time and place of a hearing which had been fixed for 24th August 2018. In that letter, the parties were also told that they required to attend the hearing and were informed that the Tribunal could make a decision at the hearing if the Tribunal had sufficient information and considered the procedure to have been fair.

The Case Management Discussion

The Applicant was in attendance at the hearing and was represented by Mr David Ogilvy, Solicitor.(who was accompanied by Ms Kirsty Nicoll, Solicitor) The Applicant was also accompanied by Ms Glenda Mowatt, Estates Manager, Rossie Priory Estate.

The Respondents were in attendance at the hearing. They were represented at the hearing by Mr Alasdair Taylor, Solicitor. The Respondents were accompanied by Mr Jack Dymoke, their son (and carer for Mrs Dymoke).

In terms of their application, the Applicant sought to rely upon Section 33 of the Housing (Scotland) Act 1988. The Applicant's position was that the conditions set out in Section 33 of the Act have been met and the short assured tenancy terminated at the ish.

Findings in Fact:

1. The Applicant and the Respondents entered into a Tenancy Agreement in terms of (a) an offer of let dated 23rd April 2015, (b) an amendment to the offer of let dated 28th April 2015 and (c) an acceptance of the offer of let (as amended) dated 30th April 2015, The Tenancy agreement between the parties was a Short Assured Tenancy Agreement in terms of Section 32 of the Housing (Scotland) Act 1988
2. The Applicant's agent served notice in terms of Section 33 of the Housing (Scotland) Act 1988, dated 20th November 2017, indicating that the Applicant required possession of the property on or before 30th April 2018
3. The Applicant served a Notice to Quit dated 20th November 2017 indicating that the Respondents required to remove from the property by 30th April 2018
4. The short assured tenancy had reached its ish.
5. Tacit relocation was not operating.
6. No further contractual tenancy is in operation.
7. The Applicant is entitled to the Order sought for repossession.

Reason for Decision

The Tribunal proceeded on the basis of the written documents which were before it. The Applicant's representative invited the Tribunal to make the Order sought. The Applicant relied upon Section 33 of the Act. The notice had been properly served. The Tribunal was satisfied that the conditions of Section 33 had been met.

The Respondents accepted that the conditions of Section 33 of the Act (and in particular those specified in s 33 (1) (a) –(d)) were satisfied in relation to the Tenancy between the parties.

On the 22nd August 2018 the Respondents had lodged written representations with the Tribunal. The Tribunal did not consider that the points raised by the Respondents in those written representations could be taken into account when considering whether to grant an order for repossession. In accordance with s33 of the Act the Tribunal "shall" grant an order for possession if satisfied that the matters specified in s 33 (1) (a) –(d) of the Act are met. The Respondents had accepted those conditions were met.

The Tribunal were not able to have regard to issues raised by the Respondent in relation to (inter alia) the motives of the Applicant or extra judicial attempts by the parties to resolve issues. Although these matters were raised in the written submissions of the Respondents, the Solicitor for the Respondents did not seek to found or insist upon them at the hearing.

The Respondents did seek to insist upon an argument that the Applicant was personally barred from seeking an order for possession.

The Respondents had raised this submission in a handwritten annex to their written submissions of 22nd August 2018.

The Solicitor for the Applicant argued that the Applicant had not been given fair notice of any specific averment in relation to the question of personal bar. He highlighted that the written submission now lodged by the Respondents was not specific in its terms and, accordingly, not capable of being answered.

The Solicitor for the Respondents accepted that the written submissions lodged by the Respondents were not specific in their terms. He did not seek to amend the written submissions to further specify the Respondents' arguments on this point.

Having heard parties Solicitors, the Tribunal determined that the Respondents had, not given any clear specification as to the actions of the Applicant which they sought to rely upon as evidence in support of a submission of personal bar. They had given vague notice that they considered that the Landlord had acted in a manner which had led them to believe that she would not be insisting on recovery of the property. They did not, however, provide any detail or specification of when or how the Landlord had so acted.

The Tribunal had regard to the overriding objectives to deal with proceedings justly (and in particular to the objectives to deal with proceedings in a manner which is proportionate to the complexity of the issues, and avoiding delay).

The Tribunal determined that the Respondent had failed to give fair notice of any specific case of personal bar and that accordingly no such argument should be considered by the Tribunal.

Accordingly, the Tribunal determined that the conditions of Section 33 of the Act were satisfied and that it was therefore appropriate to grant an order for possession.

Having heard parties further representations. The Tribunal further determined that the order for possession should not be executed prior to 12 noon on 5 October 2018.

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.

A Cowan

Legal Member/Chair

24/8/18
Date