



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/19/0973

Re: Property at Royal Hall Mews, 22b Erskine Street, Dundee, DD4 6RQ (“the Property”)

Parties:

Mr Sean Gordon Lewis, per Maureen Leslie Lewis, 171 Perth Road, Dundee (“the Applicant”)

Ms Charmaine Hayes, Royal Hall Mews, 22b Erskine Street, Dundee, DD4 6RQ (“the Respondent”)

Tribunal Members:

Lynsey MacDonald (Legal Member)

Decision (in absence of the Respondent)

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

1. Background

- 1.1. The Applicant sought an order for possession in respect of the property, under section 33 of the Housing (Scotland) Act 1988. An application in terms of Rule 66 (Possession on Termination of a Short Assured Tenancies) was received by the Tribunal on 27th March 2019.
- 1.2. The Applicants lodged a copy of the tenancy agreement, an AT5 form, an AT6 form, a s.33 notice, a Notice to Quit, together with an execution of service therefor, and a s.11 notice.
- 1.3. The Tribunal fixed a Case Management Discussion for 19th June 2019, and this was intimated to parties. The Respondent was served with the letter informing her of the date fixed, together with the aforementioned

documents, by Sheriff Officer. The Respondent was advised that written representations in response to the application were to be lodged by 4th June 2019. The Respondent was also told that she required to attend the Case Management Discussion today, and was informed that the Tribunal could today make any decision on the application that could be made at the full Hearing, if the Tribunal had sufficient information and considered that the procedure had been fair.

2. The Case Management Discussion

- 2.1. The Applicant did not attend the Case Management Discussion in person, but was represented by Ms Deng, Solicitor.
- 2.2. By 1130 hours, the Respondent had failed to attend at the venue. The Tribunal delayed in calling the Case Management Discussion, in order to allow extra time for the Respondent to attend, in the event that the Respondent was running late. The Respondent failed to attend the Case Management Discussion.
- 2.3. The Applicant's solicitor invited the Tribunal to proceed in the absence of the Respondent, and to grant the order. The Clerk had earlier confirmed that the Respondent had not been in contact with the Tribunal, and in particular written representations had not been received. The Tribunal was satisfied that the Respondent was aware of the Case Management Discussion, had wilfully failed to attend, and that it was fair to proceed in her absence.
- 2.4. The Tribunal proceeded on the basis of the written documents which had previously been lodged, together with submissions from the Applicant's solicitor.

3. Findings in Fact

- 3.1. The Applicant and the Respondent entered into a short assured tenancy agreement on 8th July 2009, with the start date for the lease being 8th July 2009. The period of the lease terminated on 7th January 2010, but allowed for monthly renewal thereafter, and termination with two months' notice.
- 3.2. On 18th December 2018, the Applicant served, by recorded delivery, a an AT6 form, a s.33 notice, and a Notice to Quit, indicating to the Respondent that possession of the property was required by 7th March 2019.
- 3.3. The section 33 notice and the Notice to Quit were served more than two months before the ish date, which was the 7th of each month.
- 3.4. The Respondent failed to vacate the property.

4. Reasons for Decision

- 4.1. There was nothing before the Tribunal challenging or disputing any of the evidence before it.
- 4.2. Section 33 of the 1988 Act provides *inter alia*:
- (1) *Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied that:*
- (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.*
- (2) *The period of notice to be given under subsection (1)(d) above shall be:*
- (i) *If the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;*
- (ii) *In any other case, two months.*
- 4.3. The Tribunal accepted that the short assured tenancy had reached its finish, and that tacit relocation was not operating.
- 4.4. The Tribunal accepted that the Applicant had given two months' notice to the Respondent that possession of the property was required.
- 4.5. Accordingly the Tribunal determined that the grounds for possession were met, and the Tribunal was required to grant the order.

5. Decision

The grounds for possession being met, the order for possession is granted.

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.

L MacDonald

Legal Member/Chair

Date

19/06/19.