



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in an application under Section 33 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/21/0539

Re: Property at 31 Ashkirk Place, Dundee, DD4 0TN (“the Property”)

Parties:

Mr Ping Xu, 20 Panmure Court, West Victoria Dock Road, Dundee, DD1 3BH (“the Applicant”)

Mr Lee Gibson, Ms Eva Krejci, UNKNOWN, UNKNOWN; 31 Ashkirk Place, Dundee, DD4 0TN (“the Respondent”)

Tribunal Members:

Lesley-Anne Mulholland (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

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

BACKGROUND

1. This is an application under Section 33 of the Housing (Scotland) Act 1988 for an order for possession upon termination of a short-assured tenancy. The Applicant is the Landlord and the Respondents are the tenants. The Applicant has title and interest by virtue of owning the Property.
2. A two-member case management discussion took place at 10.00 am on 28 May 2021 by teleconference. The applicant’s representative Mr. Wilkie joined the hearing.
5. The Respondents have failed to engage with the application and attend the Case Management Discussion. We decided to continue the discussion in their

absence after satisfying ourselves that the papers had been properly served on them and that they were notified of today's Case Management Discussion.

6. We considered the following documents lodged with the application:
 - a) Application for repossession.
 - b) Copy Tenancy Agreement
 - c) Copy AT5 Notice.
 - d) Notices to Quit dated 3rd September 2020 giving notice to leave by 8 February 2021.
 - e) Section 33 Notice dated 3rd September 2020.
 - f) Execution of service of Notices by Sheriff Officer dated 4 September 2020 and
 - g) Section11 Notice.
7. On 4 September 2020, the Applicant served the Section 33 Notice and Notice to Quit by Sheriff Officers, as evidenced by the Certificate of Execution.
8. On 19 March 2021, a Legal Member of the First-tier tribunal with delegated powers of the Chamber President, considered the application paperwork and accepted the application as validly made. On 29 March 2021 Sheriff Officers were instructed to serve the relevant documents on the Respondents. Sheriff Officers effected service on the second respondent as evidenced by the Certificate of Citation dated 30th of March 2021. The Sheriff Officer informed the Housing and Property Chamber Administration Section that on calling at the address, the second respondent claimed that the first respondent was no longer residing at the property and had left some time ago.
9. Consequently, the following details were provided in an advertisement which appeared on the Service by Advertisement page of the website of the First-tier Tribunal for Scotland Housing and Property Chamber from the advertisement date shown below until 28 May 2021.

'Reference FTS/HPC/EV/21/0539 Applicant Name and Address Ping Xu, 20 Panmure Court, West Victoria Dock Road, Dundee, DD1 3BH Respondent Name (whose address is unknown) Lee Gibson, Eva Krejci Property application relates to 31 Ashkirk Place, Dundee, DD4 0TN Advertisement Date 23/04/2021 Tribunal Venue N/A, N/A, N/A Tribunal Date/Time 28/05/2021 10:00.'
10. Service of this notice is deemed to have been carried out 15 days after the initial publication date.

ANALYSIS AND CONCLUSION

11. The Respondents entered into a short-assured tenancy agreement on the 8 February 2011 which was due to end on 8 August 2011. The tenancy has been operating through tacit relocation since then.
12. On 4 September 2020, the Applicant served the Section 33 Notice and Notice to Quit by Sheriff Officers, as evidenced by the Certificate of Execution.
13. The Notice to Quit informed the Respondents that the tenancy agreement would end on 8 February 2021. The Notice to Quit was served more than 40 days before 8 February 2021 as required by law. The Notice to Quit contained the prescribed information and no new contract of lease had been entered into. Accordingly, we are satisfied that the notice has been properly served. This means that the short-assured tenancy ended on 8 February 2021.
14. Section 33 of the 1988 Act states:

“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 for Scotland may make an order for possession of the house if it satisfied that:

 - a) the short, assured tenancy has reached its ish;
 - b) tacit relocation is not operating;
 - c) no further contractual tenancy is for the time being in existence;
 - d) the landlord has given to the tenant notice stating that he requires possession of the house; and
 - e) it is reasonable to make an order for possession.
15. The period of notice required is 6 months in accordance with Schedule 1 paragraph 4(3) of the Coronavirus (Scotland) Act 2020 which amended s.33(2)(ii) of Housing (Scotland) Act 1988. The Section 33 Notice was served on 4 September 2020. Accordingly, we are satisfied that the Respondents have received at least 6 months’ notice.
16. We are satisfied that the Short-Assured Tenancy has reached it’s ish, tacit relocation is not operating and there is no further contractual tenancy in existence. This means that the Applicant, having given adequate notice in terms of Section 33 above, can apply for an order for possession upon termination of a short-assured tenancy.
17. Since April 2020, Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020 requires a Tribunal to be satisfied that it is reasonable to grant the order before an order for possession can be granted.

18. We carefully considered the submissions from the Applicant and the written evidence before us. We reminded ourselves that a Tribunal is able to make any order at a Case Management Discussion as it can at a Hearing.
19. The Respondents have not made any written representations or attended the Case Management Discussion. Accordingly, there are no representations from the Respondents to indicate that the granting of the Order would be unreasonable.
20. Given the submissions put forward by the Applicant, after balancing the interest of both parties and in the absence of any information to the contrary, we are satisfied that it is reasonable to grant an order for possession. Accordingly, this order is granted.

Lesley-Anne Mulholland

Legal Member/Chair

28 May 2021
Date

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.