



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/22/1294

Re: Property at 5 Midmill Road, Dundee, DD4 8JG (“the Property”)

Parties:

Doctor Hassane El Mkami, 31 Troon Avenue, Dundee, DD2 3FP (“the Applicant”)

Mr David Cunningham, 5 Midmill Road, Dundee, DD4 8JG (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondent)

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

- Background
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- 1. This was a case management discussion to consider the application made by the Applicants dated 18th August 2021 for an order for repossession of the Property in terms of Rule 66 of the Tribunal Rules. The CMD took place by teleconference.
- 2. The Applicant is the Landlord in a Short Assured Tenancy with the Respondent who is the tenant. The Applicant has title and interest by virtue of owning the property.
- 3. The Applicant was personally present on the teleconference with his solicitor Mr Joe Myles. The Respondent did not attend on the call and was not represented. He has made no written representations but was served a copy of the application and the accompanying papers by sheriff officer on 27th July 2022 and so the Tribunal was satisfied the Respondent had due intimation of the CMD and that it would be appropriate to proceed in his absence.

4. The Applicant had lodged and the Tribunal had sight and considered the following documents:-
 - a. Application for repossession dated 29th April 2022
 - b. Copy Tenancy Agreement for the Property dated 7th February 2013
 - c. Copy AT5 Notice dated 7th February 2013
 - d. Notice to Quit dated 2nd September 2021 giving notice to leave by 6th March 2022
 - e. S33 Notice dated 2nd September 2021 giving notice to remove by 6th March 2022
 - f. AT6 notice dated 2nd September 2021
 - g. S11 notice to Dundee City Council sent on 13th September 2021
 - h. Text messages between the Applicant and the Respondent regarding the Respondent wishing to leave the Property and asking if it could be hurried up.
 - i. Letter from the Applicant to his solicitor dated 23rd June enclosing text messages advising he was worried about the tenant, who was imploring the landlord to evict him and saying it was almost one year since rent was paid and this was impacting the landlord financially.

The Discussion

5. The Legal Member explained the purpose and order of the proceedings today and invited the Applicant's solicitor to explain what they were seeking and why. The Tribunal waited approximately until 14.10 to see if the Respondent wished to join the call but he did not join and has not lodged any written representations.
6. The Applicant's solicitor explained that the landlord was seeking an order for possession today. He advised that the appropriate notices were served on the Respondent last year, that the respondent had indicated to the Applicant that he had a solicitor but that he just wanted to be rehoused and needed to be evicted as he had been told by the Council that he wouldn't be able to get assistance with housing until he received an order of eviction from the Tribunal. Mr Myles advised that in response to the Tribunal's direction asking for clarification about the ish date, the lease had no termination date stated in it so in law would be for one year and he had lodged some written submissions confirming that in light of the decision in the case of Morrison's executors v Rendall 1989 SLT the ish date could be and was in this case 6th February 2014, with the lease renewing if it was not ended on 7th February 2014. He advised that what he had meant when he completed the application form and referred to a term of between 7th February 2013 and 7th February 2014, was that the lease started on 7th February 2013 and renewed on 7th February 2014 as it had not been terminated on 6th which was the ish date.
7. He confirmed that it would be reasonable to grant the order for eviction today because it was clear the Respondent was not objecting to this application, that the Respondent had sought legal advice because the Respondent referred to that in his messages and that the arrears of rent now amounted to £7,250 with nothing having been paid to the Applicant for around a year.

Findings in Fact

8. The Applicant and Respondent entered into a short assured tenancy of the Property for a period of one year from 7th February 2013 to 6th February 2014 and monthly thereafter.
9. The Applicant is the Landlord and served a Form AT5 on the Respondent who is the Tenant prior to the creation of the tenancy.
10. The Tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988.
11. The Applicant has served a Notice to quit on 2nd September 2021 terminating the contractual tenancy on 6th March 2022.
12. A S33 notice was served on the Respondent giving 6 months' notice that they required possession of the Property by 6th March 2022.
13. The Respondent who is the tenant is still living in the property.
14. The Respondent has been in contact with the landlord to advise he does not oppose this application but wishes to be rehoused by the Council and requires to be evicted for that to happen.
15. A s11 notice in terms of the Homelessness etc. (Scotland) Act 2003 was served on the Local Authority
16. There are rent arrears currently in the sum of £7250 outstanding.
17. The Tribunal finds it reasonable that an order for eviction be granted.

Reasons for Decision

18. The Applicants entered into a Short Assured Tenancy with the Respondent on 7th February 2013 there was no end date specifically mentioned in the lease but that means a duration of a year is implied. The Applicant submitted that it would have lasted until 6th February 2014 as per the case of Morrison's executors v Rendall 1989 SLT and he submitted that reference in the application to the tenancy being from 7th February 2013 to 7th February 2014 was in fact reference to the tenancy renewing on 7th February 2014 having come to an end on 6th February. The Tribunal accepts that the original term of the tenancy was over 6 months and an AT5 form was served prior to that date. The tenancy itself allows for the monthly renewal of the tenancy. The Applicants have served a notice to quit terminating the tenancy on an ish or termination date namely 6th March 2022. They have also given notice of their intention to require possession in terms of S33 of the Act.
19. S33 of the Act says "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 is satisfied-
 - a) That the short assured tenancy has reached it's ish
 - b) That tacit relocation is not operating
 - c) That no further contractual tenancy is for the time being in existence and
 - 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.

The period of notice required to be given under S33 (1) (d) above is six months, in accordance with the legislation as amended. 6 months' notice has been given.

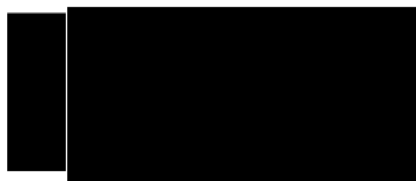
20. The Short Assured tenancy has reached its end, tacit relocation is not operating and there is no further contractual tenancy in existence, so the Applicant having given adequate notice in terms of S33 above, can and has applied to repossess the Property. However since April 2020 and Section 2 and Schedule 1 of the Coronavirus (Scotland) Act 2020, there has been a change to the law on repossessions and before an order for possession is granted the Tribunal has to be satisfied that it is reasonable to grant the order.
21. The Tribunal is able to make any order at a case management discussion as it can after a Hearing. The Tribunal considered carefully the submissions from the Applicants and the written evidence it had before it. The Applicants have served the relevant notices over a year ago and the Respondent has indicated to the applicant that he does not wish to oppose this application but is waiting to be evicted so that the council will prioritise him for rehousing. The Respondent has not attended today or submitted any written representations for the Tribunal to consider. The Respondent is in considerable rent arrears and the Applicant is prejudiced financially. It is nearly a year since the S33 notice was served giving notice to the tenant to leave; given the rent arrears are considerable amounting currently to around £7,250; given the Tribunal has seen messages from the Respondent that indicates he is seeking a repossession and given the council does have a duty to rehouse or give advice on this to the Respondent then the Tribunal balancing the interests of both parties, finds it is reasonable to grant an order for repossession at this CMD and that a hearing is not required.

- **Decision**

An order for repossession was 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.



Legal Member/Chair

_31st August 2022 _____
Date

