



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/23/1531

Re: Property at 71c Sandeman Street, Dundee, DD3 7LB (“the Property”)

Parties:

Mr George Nicoll, c/o 44 Kinghorne Road, Dundee, Scotland, DD3 6PU (“the Applicant”)

Miss Shona Alcorn, 71c Sandeman Street, Dundee, DD3 7LB (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. By application dated 9 May 2023 the Applicant applied to the Tribunal for an order for possession of the property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant submitted a copy of a section 33 Notice, Form AT6 and the tenancy Agreement.
2. Following further correspondence between the tribunal administration and the Applicant, the Applicant provided evidence of a Notice to Quit and Section 33 Notice being served on the Respondent and confirmation of a Section 11 Notice being sent to the local authority.
3. By Notice of Acceptance dated 2 August 2023 a legal member of the Tribunal accepted the application and a Case Management Discussion (“CMD”) was assigned.

4. Intimation of the CMD was served on the Respondent by Sheriff Officers on 15 August 2023.

The Case Management Discussion

5. A CMD was held by teleconference on 13 September 2023. The Applicant attended in person. The Respondent did not attend nor was she represented. The Tribunal being satisfied that proper intimation of the date and time of the CMD had been given to the Respondent determined to proceed in her absence.
6. The Tribunal noted that the Applicant had not addressed the issues raised during the sifting process with regards to the validity of the notice to Quit given that the date on it was incorrect and that the lease did not appear to provide for a minimum period of 6 months and therefore it might not be a Short Assured Tenancy.
7. The Applicant submitted that although the lease stated it was a rolling tenancy this meant that it continued for six-month periods even if it did not say that. The Tribunal noted that Clause 1 of the lease provided for the lease terminating on the date of termination but if not terminated then either party could terminate it on giving two months' notice.
8. With regards to the error on the Notice to Quit the Applicant admitted the mistake had been his but that the correct date had been added beside his signature and the document had been served on the Respondent by Sheriff Officers on 8 February 2023. He submitted it would be exceptionally harsh if the Tribunal were to find the Notice to Quit to be invalid simply because he had made a mistake with the date.
9. The Tribunal noted that the Section 11 notice had indicated that the tenancy had commenced on 7 April 2014 but the lease said that the tenancy commenced on 6 May 2014 and asked the Applicant to explain the discrepancy. The Applicant said he had made another mistake with the date.
10. The Tribunal noted that the Applicant had previously occupied the property as his home from 2006 until 2014 following a separation from his wife. He explained that he and his wife had reconciled in 2014 and he had rented the property to the Respondent. The Applicant went on to say that he and his wife had separated again in 2021 and he now wished to recover the property in order to live in it as he was going through a divorce. He explained a previous application to the Tribunal had been rejected. He said that he had nowhere to live at present and was moving from sofa to sofa. He said he found it very frustrating that he could not get his own property back. The Applicant went on to say that he had undergone quadruple bypass surgery in June this year and was still recuperating and was off work for another three months.
11. With regards to the Respondent's circumstances the Applicant explained that she lived in the property with her 19-year-old son who was an apprentice joiner. He said that the Respondent was a taxi driver. He said that the Respondent

had arrears of rent of £960.00 and did not answer her phone or respond to messages. She did not have any disabilities.

12. The Applicant asked the Tribunal to grant the order.

Findings in Fact

13. The parties entered into an Assured Tenancy that commenced on 6 May 2014.

14. The Applicant arranged for Sheriff Officers to serve an AT6 and Notice to Quit and Section 33 Notice on the Respondent on 8 February 2023.

15. The Applicant wishes possession of the property in order to live in it himself.

16. The Applicant is currently recuperating from major heart surgery and is signed off work.

17. The Applicant has no permanent home.

Reasons for Decision

18. The Tribunal was not satisfied that the tenancy agreement by not having a termination date and referring to it having a “rolling contract” fulfilled the requirements necessary for a Short Assured Tenancy. A Short Assured Tenancy had to endure for a minimum period of 6 months. The tenancy agreement contained no such provision. Although the Applicant suggested that “rolling Contract” meant rolling on for 6 months at a time the Tribunal was not satisfied that this was the case particularly when the agreement made provision for either party giving two months’ notice to end the contract. The Tribunal did not doubt that it had been the Applicant’s intention to create a Short Assured Tenancy given that an AT5 had been served at the commencement of the tenancy but that in itself was insufficient to satisfy the legislative requirements. The result was that an assured tenancy was created. That being the case it could not be brought to an end under Section 33 of the 1988 Act. If the Applicant wished to obtain possession on the ground that he wished to return to the property to live in it then he ought to have sought possession under Ground 1 of Schedule 5 of the 1988 Act (and indeed he had served an AT6 on the Respondent to that effect). However, that would require a separate application under Rule 65.

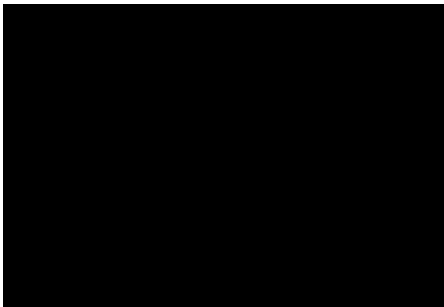
19. The Tribunal had considerable sympathy for the Applicant given his personal circumstances but given the issues with the terms of the tenancy agreement determined to refuse the application.

Decision

20. The Tribunal having carefully considered the written representations and documents submitted together with the oral submissions of the Applicant and being satisfied it had sufficient information before it to make a decision without the need for a hearing, refuses the application.

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

13 September 2023
Date