



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/20/1156

Re: Property at 241 High Street, Kinross, KY13 8DL (“the Property”)

Parties:

Mr James Sands, 33 Stirling Road, Edinburgh, EH5 3JA (“the Applicant”)

Mr Ian Washington, 241 High Street, Kinross, KY13 8DL (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member)

Decision

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

Background

The Applicant lodged an application with the Tribunal on 7th May 2020 under Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 “the Procedure Rules”), seeking an order for eviction in terms of section 33 of the Housing (Scotland) Act 1988.

Lodged with the Application were:

1. Tenancy Agreement
2. AT5
3. Notice to Quit
4. Section 33 Notice
5. Sheriff Officer Certificate of Service

Case Management Discussion

The CMD took place by teleconference.

The Miss McNicol of McNabs, Solicitors, dialled in on behalf of the Applicant. Mr Washington, the Respondent, also dialled in.

The Chairperson had each party introduce themselves and explained the purposes of a CMD in terms of Rule 17. She made it clear that if she had sufficient information she could make a final decision at the CMD. She confirmed with each party that they understood. They confirmed that they did.

Miss McNicol was asked to present her case. She explained that action had been raised on the basis that notices had been served to bring the Short Assured Tenancy between the parties to an end at its ish date. Tacit relocation was not operating. In terms of section 33 of the Housing (Scotland) Act it was mandatory to rant the order and she moved the tribunal to do so.

The Chairperson asked Miss McNicol to comment on the implications of the Coronavirus (Scotland) Act 2020. She said that as the notices had been served before the Act came in to force it did not apply. The notices were served on 13th February 2020 and the Act did not come in to effect until 7th April 2020.

The Chairperson asked Mr Washington for his position. He said that he had now taken legal advice and accepted that there was nothing he could do to prevent the order being granted. He said that he had now found alternative accommodation and hoped to move out by the end of the month. He joined the teleconference to enable matters to be brought to a close. The Chairperson thanked him for doing so.

Findings In Fact

1. The parties entered in to a short assured tenancy agreement in relation to the property;
2. A Notice to Quit and a Section 33 Notice had been served correctly and timeously;
3. Tacit relocation was not operating;
4. The provisions of the Coronavirus (Scotland) Act 2020 do not apply as the Notices were served prior to 7th April 2020;

Reasons For Decision

In terms of the Housing (Scotland) Act 1988 section 33 if the Notice To Quit and Section 33 Notices have been served correctly the Tribunal must grant the order for eviction.

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.

Alison Kelly

Legal Member/Chair

14/08/2020

Date