



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/20/1617

Re: Property at 1/L 21A St Marys Road, Dundee, DD3 9DH (“the Property”)

Parties:

Gendisot LTD, 35 Byron Street, Dundee, DD3 6QT (“the Applicant”)

Mr Alistair Muir, 1/L 21A St Marys Road, Dundee, DD3 9DH (“the Respondent”)

Tribunal Members:

Helen Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the Property should be granted against the Respondent under section 33 of the Housing (Scotland) Act 1988.

Background

1. This is an application dated 27th July 2020, made in terms of Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) and section 33 of the Housing (Scotland) Act 1988. The Applicant is seeking an order for possession of the Property.
2. The Applicant lodged a copy short-assured tenancy agreement which commenced on 17th November 2017 for a period of one year and monthly thereafter, copy Form AT5 dated 18th October 2017, copy Notice to Quit and Section 33 notice dated 20th and served 21st January 2020 requiring the Respondent to remove from the Property by 17th April 2020 and copy section 11 notice served on 27th July 2020.

3. Notification of the CMD and application was made upon the Respondent by Sheriff Officers on 8th September 2020.
4. By email dated 29th September 2020, the representatives for the Respondent made written representations.

The Case Management Discussion

5. A Case Management Discussion (“CMD”) took place by telephone conference on 2nd October 2020. Neither party was in attendance. The Applicant was represented by Ms Jane Carmichael, Senior Residential Property Manager, Westport Property Limited. The Respondent was represented by Mrs Judith Horseman, Solicitor, Dundee North Law Centre.
6. There was no objection to the late lodging of the written representations by the Respondent’s representative.
7. Ms Carmichael confirmed that her client was seeking an order for possession of the Property.
8. Mrs Horseman expanded upon the written representations lodged, stating that the Respondent does not oppose the order sought, however, he has special housing requirements and is in the process of applying for social housing. Due to the Covid-19 outbreak, his application for housing had been closed. It is now live again. The housing department have stated they expect to find housing for the Respondent within a period of some weeks. The Respondent is seeking to have execution of any order for possession delayed for a period of ten weeks, during which it is expected he would obtain social housing.
9. Ms Carmichael said that her client would not have any difficulty with a period of ten weeks before any order for possession can be executed.

Findings in Fact

10.
 - (i) The parties entered into a short assured tenancy in respect of the Property on 17th November 2017 for a period of one year and monthly thereafter.
 - (ii) Notice to Quit and Section 33 Notice dated 20th January 2020 were served on the Respondent on 21st January 2020.
 - (iii) The short assured tenancy has reached its ish date.
 - (iv) The contractual tenancy terminated on 17th April 2020.
 - (v) Tacit relocation is not in operation.

- (vi) The Applicant has given the Respondent notice that they require possession of the Property.

Reasons for Decision

11. Section 33 of the Act provides that the Tribunal shall make an order for possession if satisfied that the short assured tenancy has reached its finish and that tacit relocation is not operating. The contractual tenancy has been terminated and tacit relocation is not in operation. The Applicant has given the Respondent notice that they require possession of the Property. In the circumstances, the Tribunal must grant the order sought.

Decision

12. An order for possession of the Property is granted against the Respondent under section 33 of the Housing (Scotland) Act 1988. The order cannot be executed prior to 12 noon on 7th December 2020

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.

Helen Forbes

Legal Member/Chair

2nd October 2020
Date