



**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/20/1659

Re: Property at 26 Duncan Court, Kilmarnock, KA3 7TF (“the Property”)

Parties:

Mr Brian Malcolm, 5 Kidsnuek, Irvine, KA12 8SR (“the Applicant”)

**Mrs Elaine Roberts, 26 Duncan Court, Kilmarnock, KA3 7TF (“the
Respondent”)**

Tribunal Members:

Andrew Upton (Legal Member)

Decision

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

FINDINGS IN FACT

1. The Applicant was the landlord, and the Respondent the tenant, of the Property under and in terms of a Short Assured Tenancy Agreement which commenced on 17 February 2017 and had an initial duration of 6 months, continuing month to month thereafter.
2. By notice dated 12 March 2020 and served by sheriff officer on 13 March 2020, the Applicant gave notice to quit and notice under section 33(1)(d) of the Housing (Scotland) Act 1988 in a single notice to the Respondent, providing that the Respondent required to remove from the property and that the Applicant required possession of the property by 17 May 2020.
3. The Respondent remains in the Property.

FINDINGS IN FACT AND LAW

1. The tenancy reached its end at 17 May 2020.
2. Tacit relocation is not operating, the Applicant having given Notice to Quit to the Respondent to stop tacit relocation on 17 May 2020.
3. The Applicant having given notice in terms of section 33(1)(d) of the Housing (Scotland) Act 1988, the requirements of section 33 are met.

STATEMENT OF REASONS

1. This application called for its Case Management Discussion by teleconference on 26 October 2020. The applicant was represented by Ms Honeyman. The Respondent participated in the call personally.
2. The following facts were agreed by the parties:-
 - a. The Applicant was the landlord, and the Respondent the tenant, of the Property under and in terms of a Short Assured Tenancy Agreement which commenced on 17 February 2017 and had an initial duration of 6 months, continuing month to month thereafter.
 - b. By notice dated 12 March 2020 and served by sheriff officer on 13 March 2020, the Applicant gave notice to quit and notice under section 33(1)(d) of the Housing (Scotland) Act 1988 in a single notice to the Respondent, providing that the Respondent required to remove from the property and that the Applicant required possession of the property by 17 May 2020.
 - c. The Respondent remains in the Property.
3. In terms of Rule 17 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure, the Tribunal can do anything at a Case Management Discussion that it may do at a Hearing, including make a decision. In terms of Rule 2, the Tribunal must have regard to the overriding objection to deal with proceedings justly when making a decision, including the need to deal with proceedings without delay.
4. In terms of the Housing (Scotland) Act 1988:-

33.— Recovery of possession on termination of a short assured tenancy.

- (1) 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 shall make an order for possession of the house if the Tribunal is satisfied—
 - (a) that the short assured tenancy has reached its end;
 - (b) that tacit relocation is not operating; 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.
 - (2) The period of notice to be given under subsection (1)(d) above shall be—
 - (i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;
 - (ii) in any other case, two months.
 - (3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.
 - (4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that time shall end (without further notice) on the day on which the order takes effect.
 - (5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”
5. Section 33 of the 1988 Act affords no discretion. If the requirements of section 33 are met, then the Tribunal must grant the order. Whilst the Coronavirus (Scotland) Act 2020 altered that position for notices served after 7 April 2020, we are dealing with a notice served on 13 March 2020.
6. The Short Assured Tenancy Agreement reached its end on 17 May 2020. Tacit relocation was no longer operating, the Applicant having given Notice to Quit to the Respondent. The Applicant had also given notice in terms of section 33(1)(d) of the 1988 Act, providing a period of notice in excess of two months. That being so, the requirements of section 33 are met and I must grant the order.

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.

Andrew Upton

Legal Member/Chair

26.10.2020

Date