



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 33 of the Housing (Scotland) c
988**

Chamber Ref: FTS/HPC/EV/20/1756

Re: Property at 22 Deveron Crescent, Dundee, DD2 4AL (“the Property”)

Parties:

Mr Mark Westbrook, 1 Liff Road, Muirhead, Dundee, DD2 5QF (“the Applicant”)

**Ms Grazyna Gozdzialaska, 22 Deveron Crescent, Dundee, DD2 4AL (“the
Respondent”)**

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant was entitled to an order for possession
of the property and the removal of the Respondent from the property.**

Background

1. By application dated 19 August 2020 the Applicant’s representatives Rentlocally, Dundee applied to the Tribunal for an order under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) for possession of the property and the removal the Respondent from the property. The Applicant’s representatives submitted copies of the Short-Assured Tenancy Agreement, Notice to Quit, Forms AT5, AT6, Sheriff Officers Execution of Service, Section 33 Notice and proof of service to Dundee City Council in support of the application.
2. By Notice of Acceptance dated 1 September 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management Discussion was given to the Applicant's representatives by post on 17 September 2020 and to the Respondent by Sheriff Officers on 22 September 2020.
4. The Applicant's representatives submitted further written representations on 15 October 2020.

The Case Management Discussion

5. A Case Management Discussion was held by teleconference on 16 October 2020. The Applicant was represented by Mr. Trevor White of Rentlocally, Dundee. The Respondent did not attend and was not represented. The Tribunal being satisfied that proper intimation had been given determined in terms of Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 to proceed in the Respondent's absence.
6. Mr White confirmed that the parties had entered into a Short Assured Tenancy that had commenced on 3 February 2015 for a period of 12 months and had then continued from month to month with either party being able to end the tenancy on giving two months' notice.
7. Mr White said that his firm had arranged for a Notice to Quit and Section 33 Notice both dated 20 February 2019 to be served on the Respondent by Sheriff Officers and referred the Tribunal to the documents and the Sheriff Officers' Certificate of Service dated 26 February 2019. Mr White also confirmed that a Form AT6 had also been served on the Respondent but that this had been an error as it was not required.
8. The Tribunal queried why there had been such a long delay between service of the Notice to Quit and Section 33 Notice and the raising of these proceedings. Mr White explained that the Applicant had wanted to give the Respondent an opportunity to reduce her rent arrears but instead the arrears had continued to rise. Mr White went on to say that the Respondent was fully aware of the proceedings and that was why she had probably not attended the Case Management discussion.
9. Mr White submitted that the proper notices having been served on the Respondent and intimation having been given to Dundee City Council by way of a Section 11 Notice the order should be granted.

Findings in Fact

10. The parties entered into a Short Assured Tenancy that commenced on 3 February 2015 and endured for a period of twelve months and continued from month to month thereafter.
11. Sheriff Officers served a Notice to Quit and a Section 33 Notice on the Respondent on 26 February 2019.

12. Sheriff Officers also served a Form AT6 on the Respondent on 26 February 2019.
13. The Applicant's representatives sent a Section 11 Notice to Dundee City Council on 19 August 2020.

Reasons for Decision

14. Section 33 of the Housing Scotland Act 1988 provides that if a Short Assured tenancy has reached its term and tacit relocation is not operating and the tenant has been given notice that the landlord requires possession then the Tribunal (except where the Coronavirus (Scotland) Act 2020 ("the 2020 Act") applies) must grant an order for possession. The 2020 Act does not apply in this case as the Notice to Quit and Section 33 Notice were served prior to that Act coming into force.
15. The Tribunal was satisfied that proper notice of the termination of the tenancy and that the Applicant required possession had been given to the Respondent by the Notices served on her by Sheriff Officers on 26 February 2019. The Tribunal accepted that service of the Form AT6 was made in error and was not required as in terms of Section 33(5) of the 1988 Act Sections 18 and 19 of that Act do not apply to a landlord seeking possession under Section 33. The Tribunal was also satisfied that Dundee City Council had been given notice of the application by intimation of the Section 11 Notice by email dated 19 August 2020.
16. The terms of Section 33 of the 1988 Act having been met, intimation of proceedings having been given to the local authority and the Respondent not having participated in the proceedings the Tribunal was satisfied from the documents submitted and the written and oral submissions that the order sought should be granted.

Decision

17. The Tribunal finds the Applicant entitled to an order for recovery of possession of the property and the removal of the Respondent from the property.

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.

Graham Harding
Legal Member/Chair

16 October 2020
Date