



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/20/1759

Re: Property at 22 Carleton Gate, Giffnock, Glasgow, G46 6NU (“the Property”)

Parties:

Ms Pamela Wilson, 3 Florence Drive, Giffnock, Glasgow, G46 6UL (“the Applicant”)

Ms Stacey Fulton, 22 Carleton Gate, Giffnock, Glasgow, G46 6NU (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession of the Property against the Respondent.

Background

- 1 By application to the Tribunal under Rule 66 of the First-tier Tribunal (Housing and Property Chamber) Procedural Rules 2017 the Applicant sought an order for repossession against the Respondent under section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The following documents were submitted in support of the application:-
 - (i) Copy Tenancy Agreement between the parties dated 19 September 2017 and Form AT5 of same date;
 - (ii) Copy Notice to Quit dated 16 March 2020, terminating the tenancy as at 19 May 2020;

- (iii) Copy Notice under section 33(1)(d) of the 1988 Act dated 16 March 2020 intimating that the landlord required possession of the house as at 19 May 2020;
- (iv) Certificate of Service from Sheriff Officers dated 17 March 2020 confirming service of the notices at (ii) and (iii); and
- (v) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to East Renfrewshire Council with cover email.

For the avoidance of doubt the Applicant also submitted extensive documentation relating to the Respondent's conduct of the tenancy. However as this was not relevant to the Tribunal's determination of the application under Rule 66 it is not listed above.

- 2 By Notice of Acceptance of Application dated 8 September 2020 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds to reject the application. A Case Management Discussion was therefore assigned for 16 October 2020. Due to the ongoing restrictions caused by the Covid-19 pandemic, a Direction was issued by the Chamber President confirming that the case conference would take place by tele-conference.
- 3 The application paperwork together with notification of the date, time and location of the Case Management Discussion was served on the Respondent on 21st September 2020 by Sheriff Officers.

The Case Management Discussion

- 4 A Case Management Discussion took place on 16th October 2020. Both parties were present.
- 5 The Legal Member explained the purpose of the Case Management Discussion and the legal test that the Tribunal required to determine under section 33 of the Housing (Scotland) Act 1988. She noted that there had been allegations relating to the Respondent's conduct submitted with the application however ultimately the only issue for the Tribunal to consider was whether the provisions of section 33 had been met. She then asked parties to address her on their respective positions. Their submissions can be summarised as follows:-
 - 5.1 The Applicant explained that she was seeking an order for repossession of the property. She confirmed the tenancy was a short assured tenancy which had originally been for a period from 19 September 2017 to 19 March 2018. It had continued monthly thereafter. A Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988 had been served on the Respondent by Sheriff Officers, which had terminated the tenancy as at 19 May 2020.
 - 5.2 The Respondent explained that the Applicant had served the said notices following a misunderstanding regarding issues with rubbish at

the property. She explained that there had been issues with rubbish at the property, a rat infestation and Environmental Health had been involved. However the Respondent had done everything expected of her. The Applicant had been at fault. The Respondent explained that she had been diagnosed with a health condition earlier in the year which she had struggled with but she was now on medication. She pointed to the ongoing Coronavirus situation and stated that it would not be reasonable for the eviction order to be granted as a result. She did not think the Applicant had treated her fairly. In response to questions from the Tribunal the Respondent confirmed she had received the notices served by the Applicant.

Relevant Law

6 Sections 32 and 33 of the Housing (Scotland) Act 1988 provide as follows:-

32 Short assured tenancies.

(1) A short assured tenancy is an assured tenancy—

(a) which is for a term of not less than six months; and

(b) in respect of which a notice is served as mentioned in subsection (2) below.

(2) The notice referred to in subsection (1)(b) above is one which—

(a) is in such form as may be prescribed;

(b) is served before the creation of the assured tenancy;

(c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and

(d) states that the assured tenancy to which it relates is to be a short assured tenancy.

(3) Subject to subsection (4) below, if, at the finish of a short assured tenancy—

(a) it continues by tacit relocation;

the continued tenancy shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.

(4) Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued tenancy is not to be a short assured tenancy.

(5) Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.

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 finish;

(b) that tacit relocation is not operating; and

c)

(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 finish 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.

Findings in Fact and Law

- 7 The parties entered into a Tenancy Agreement dated 19 September 2017, the term of which was a period from 19 September 2017 to 19 March 2018, both dates inclusive and monthly thereafter.
- 8 The tenancy was a Short Assured Tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 9 On 17 March 2020 the Respondent was served with a Notice to Quit terminating the tenancy as at 19 May 2020 and Notice under section 33(1)(d) of the Housing (Scotland) Act 1988 informing her that the Applicant required possession of the property as at that same date. The Notices were served by Sheriff Officers.
- 10 The Short Assured Tenancy has reached its ish as at 19 May 2020. Tacit relocation is not operating.
- 11 The provisions of section 33 of the Housing (Scotland) Act 1988 have been met.

Reasons for Decision

- 12 The Tribunal was satisfied that it was able to make a decision at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. There were no identified issues that required to be

resolved and therefore no requirement to fix a hearing in the matter. It was clear the Respondent was aggrieved with the action taken by the Applicant, however ultimately she did not raise anything in her submissions to the Tribunal that amounted to a stateable defence to the application. Whilst the Tribunal did have sympathy for the Respondent's position, neither the reasonableness of granting the order nor the landlord's intentions were matters Tribunal could have regard to when determining an application under section 33 of the Housing (Scotland) Act 1988.

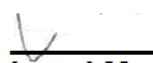
- 13 Section 33 can only be relied upon for repossession of a short assured tenancy. The Tribunal was satisfied based on the application paperwork that the tenancy was a short assured tenancy as defined by section 32 of the 1988 Act in that it was for a minimum of six months and the notice required by section 32(2) of that Act (the Form AT5) had been given to the Respondent prior to the signing of the tenancy agreement confirming that the tenancy she was entering into was a short assured tenancy.
- 14 The Tribunal therefore considered the provisions of section 33. The Respondent had been served with a valid Notice to Quit which terminated the contractual tenancy between the parties as at 19 May 2020. That, according to the provisions of the Tenancy Agreement and the Tribunal's own calculations, was a valid ish date. The Respondent had also been given at least two months notice that the landlord required possession of the house as at that date. She did not dispute receiving either notice.
- 15 Accordingly based on the Tribunal's findings in fact, the Tribunal considered that the requirements of section 33 had been met. On that basis it was obliged to make the order for repossession.
- 16 The Tribunal therefore made an order for repossession of the property against the Respondent.

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.

Ruth O'Hare

16 October 2020



Legal Member/Chair

Date