



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/20/1814

Re: Property at 40 Balmoral Drive, Kirkcaldy, Fife, KY2 5QT (“the Property”)

Parties:

Mrs Carolyn Todd, 1a Leven Bank, South Street East, Leslie, KY6 3AL (“the Applicant”)

Mr David Finlay, 40 Balmoral Drive, Kirkcaldy, Fife, KY2 5QT (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

Background

By application, received by the Tribunal on 28 August 2020, the Applicant sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”).

The application was accompanied by copies of a Short Assured Tenancy Agreement between the Parties from 6 March 2017 to 7 March 2018 and, if not terminated on that date, continuing on a month to month basis thereafter until ended by either party in writing, a Form AT5 Notice, signed by the Parties on 22 and 23 February 2017, a Notice to Quit dated 25 February 2020 and a Notice given under Section 33 of the 1988 Act, with proof of service by sheriff officer on 26 February 2020. The Notice to Quit and Section 33 Notices both required the Respondent to vacate the Property by 7 May 2020.

On 15 September 2020, the Tribunal advised the Parties of the date and time of a Case Management Discussion and the Respondent was invited to make written

representations by 6 October 2020. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 14 October 2020. The Applicant was represented by Ms Frieda Duffy of Easy Move Everytime Ltd Kirkcaldy. The Respondent was not present or represented. The Applicant's representative asked the Tribunal to make an Order for Possession without a Hearing.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

The Tribunal noted that the application was based on a Notice to Quit and Section 33 Notice served on 26 February 2020. This means that the provisions of the Coronavirus (Scotland) Act 2020 do not apply, as they did not come into force until 7 April 2020.

Section 33 of the 1988 Act states that the Tribunal shall make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence and that the landlord has given to the tenant notice that the landlord requires possession of the house.

The Tribunal was satisfied that the tenancy in the present case was a Short Assured Tenancy which had reached its end, that, by service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence and that the Applicant had served on the Respondent the required Notice under Section 33 of the 1988 Act that she requires possession of the Property. Accordingly, the requirements of Section 33 had been met and the Tribunal was bound to make an Order for Possession of 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.

George Clark

14 October 2020

Legal Member/Chair

Date