



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/20/1872

Re: Property at 75d Watson Street, Dundee, DD4 6HG (“the Property”)

Parties:

Mr Keiran Ferrie, care of Bank House, Stirling Street, Dundee, DD3 6PJ (“the Applicant”)

Mr Graeme Coghil, 75d Watson Street, Dundee, DD4 6HG (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

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

Background:

The application for an order for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988 was made on 31 August 2020. The Applicant lodged with the application the Short Assured Tenancy Agreement commencing on 20 January 2017 as well as a copy of the AT5, the Notice to Quit and S 33 Notice dated 26 February 2020 and the recorded delivery slip confirming it was sent on that day. The bundle also contained the S 11 Notice to the Local Authority under the Homelessness etc (Scotland) Act 2003.

Track and trace of the recorded delivery number shows service of the Notice to Leave and S 33 Notice on 27 February 2020.

The documents are referred to for their terms and held to be incorporated herein.

A Case Management Discussion (CMD) was scheduled for 20 October 2020 and both parties notified of the date and time. Service on the Respondent by Sheriff Officers was confirmed to have taken place on 22 September 2020 by personal

service. The intimation to the parties included the information that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application.

The Respondent had been given the 14 days notice required in Rule 24 of the Rules of Procedure.

The Case Management Discussion:

The Respondent did not participate in the telephone conference CMD. The Respondent did not attend and made no representations at the CMD. However, the Respondent had contacted the Tribunal on 6 October 2020 by telephone enquiring whether he needed to dial into the CMD as he was not contesting the application. After he had been advised that the Tribunal can make a decision in the absence of the parties he stated it would not be necessary for him to participate in the CMD or to lodge written representations. A file note to that effect was logged on the case file by the case worker.

The Applicant's representative Mr Campbell took part in the CMD. On behalf of the Applicant he moved the application.

He confirmed that the parties had entered into a Short Assured Tenancy and both parties were in agreement that the start and end date stated in the tenancy agreement were to be fully included in the calculation of the lease term of 6 months. The original Short Assured Tenancy had continued on tacit relocation every two months and was only terminated as a contractual tenancy by the Notice to Quit issued and served on 26 February 2020 for the end date of 19 May 2020. A S 33 Notice had been served at the same time for the same date. There had been no other contractual tenancy entered into between the parties.

Mr Campbell confirmed that the Respondent remained in the property and continued to occupy it.

Findings in Fact:

1. The Applicant and the Respondent entered into a Short Assured Tenancy for the property with a start date of 20 January 2017 and an initial end date of 19 July 2017 (Clause 5).
2. As agreed by the parties both the start and end date were to be included in the tenancy period and thus the tenancy term was 6 months.
3. If not terminated by the end date the tenancy continued on a two monthly basis (Clause 5) thereafter.
4. The Document AT5 was receipted and signed by the Respondent.
5. The tenancy could be terminated by giving 2 months notice (Clause headed Landlord Notice)
6. Notice to Quit was served on the Respondent on 26 February 2020 advising of the termination of the tenancy on the termination date of 19 May 2020

7. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent on 26 February 2020 advising of the intention to repossess the premises on 19 May 2020.
8. The Notice to Quit and S 33 Notice were signed for by the Respondent on 27 February 2020.
9. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
10. The Respondent continued to occupy the property at the date of the CMD.
11. The amendments to the Housing (Scotland) Act 1988 in terms of paragraphs 3 and 4 of Schedule 1 of the Coronavirus (Scotland) Act 2020 do not apply in this case as the relevant notices were served prior to 7 April 2020.

Reasons for the Decision:

The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
 - (i) correcting; or
 - (ii) reviewing on a point of law, a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

The Tribunal did not consider that there was any need for a hearing as the essential facts of the case were sufficiently evidenced to make the relevant findings in fact to determine the case.

The Tribunal makes the decision on the basis of the documents lodged by the Applicant, the message of the Respondent of 6 October 2020 and the information given at the CMD.

In terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its ish
2. That tacit relocation is not operating
3. That no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
4. That the landlord has given to the tenant notice that he requires possession of the house.

The Tribunal was satisfied on the basis of the documents lodged that that all requirements for recovery of possession in terms of the Housing Scotland Act 1988 had been complied with.

The tenancy agreement was a Short Assured Tenancy. A Notice to Quit and a Notice in terms of S 33 (1) (d) of the Housing (Scotland) Act 1988 had been served on the Respondent by recorded delivery on 26 February 2020 and were signed for by the Respondent on 27 February 2020.

The Tribunal is satisfied that these gave the required 2 months notice in terms of S33 of the Act and the required 2 months notice in the Notice to Quit in terms of the lease.

The lease continued on tacit relocation until terminated by the Notice to Quit to 19 May 2020. 19 May 2020 was a valid ish date.

The Tribunal concluded it was not necessary to fix a hearing as the Respondent had not attended the CMD and according to his telephone message was not contesting the application. No written representations were received. The documents lodged evidenced sufficiently the matters required to determine whether the legal tests for an order in terms of S 33 of the Housing (Scotland) Act 1988 are met.

If the tests of S 33 (1) of the Housing (Scotland) Act 1988 are met there is no discretion for the Tribunal and the order must be granted.

Decision

The Tribunal grants the order for possession as per the application.

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.

Petra Hennig McFatridge

20 October 2020

Legal Member/Chair

Date