



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/20/2317

Re: Property at 53 Kirk Street, Coatbridge, ML5 1BP (“the Property”)

Parties:

Mrs Avtar Pabla, 88E Drummore Avenue, Coatbridge, ML5 4BZ (“the Applicant”)

Mr Garry Austin, 53 Kirk Street, Coatbridge, ML5 1BP (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision

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 3 November 2020, the Applicant sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”), namely recovery of possession on termination of a Short Assured Tenancy.

The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 14 September 2017 and, if not terminated on 14 March 2018, continuing on a monthly basis until terminated by either Party giving two months’ written notice to the other. The Applicant also provided a copy of a Form AT5 Notice dated 13 September 2017, a Notice given under Section 33 of the 1988 Act and a Notice to Quit, both Notices dated 10 February 2020 and both requiring the Respondent to vacate the Property by 14 April 2020.

On 25 November 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 16 December 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 morning of 8 January 2021. Both Parties participated in the call. The Applicant asked the Tribunal to make an Order for Possession without a Hearing. The Respondent told the Tribunal that he had recognised a year ago that he could not afford the rent for the Property and had approached the local authority regarding being re-housed, but the Council had declined to help at that stage, as he still had a “roof over his head”. He had nowhere to go unless he was re-housed by the Council.

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.

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 stating that he requires possession of the house.

The Tribunal was satisfied that the tenancy 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 between the Parties and that the Notice required under Section 33 of the 1988 Act had been properly given. Accordingly, the requirements of Section 33 had been met and the Tribunal was bound to make an Order for Possession of the Property. The Order would be capable of enforcement from midday on 10 February 2021.

The Tribunal sympathised with the position in which the Respondent had found himself, but the Applicant had fulfilled all the requirements set out in the relevant legislation and the Tribunal had no option but to grant the Order for Possession against him.

The Notice to Quit on which the application relied was served prior to 7 April 2020, so the application is not affected by the terms of the Coronavirus (Scotland) Act 2020.

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.

G Clark

Legal Member/Chair

8 January 2021

Date