



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 (“1988 Act”)

Chamber Ref: FTS/HPC/EV/21/1268

Re: 28 Broomberry Drive, Gourock, Inverclyde, PA19 1JY (“the Property”)

Parties:

Ms Doreen Leon, 105 Octavia Terrace, Fort Matilda, Greenock, PA16 7PY (“the Applicant”)

Ms Dawn Leighton, 28 Broomberry Drive, Gourock, Inverclyde, PA19 1JY (“the Respondent”)

Tribunal Members:

Pamela Woodman (Legal Member) and Frances Wood (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/EV/21/1268 took place at 10am on Wednesday 28 July 2021 by telephone conference call (“**the CMD**”). The Applicant was not present at the CMD but was represented by Mr Kenneth Caldwell of Patten & Prentice LLP (“**Applicant’s Representative**”). The Respondent was not present at the CMD and had not informed the Tribunal that she would not be present. The clerk to the Tribunal was Mrs Caitlin Munro. This case was conjoined with the case with case reference FTS/HPC/CV/21/1269.

Decision (in the absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

BACKGROUND

1. An application was made to the Tribunal under section 33 of the 1988 Act. The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“**2017 Regulations**”). More

specifically, the application was made in terms of rule 66 (*Application for order for possession upon termination of a short assured tenancy*) of the HPC Rules.

2. The order sought was an order for possession of the Property.
3. The application dated 26 May 2021 was accompanied by copies of various documents, including:
 - a. Short assured tenancy agreement between the Applicant and the Respondent in respect of the Property dated 9 August 2013 ("**Tenancy Agreement**");
 - b. Notice under section 32 of the 1988 Act dated 9 August 2013 ("**Section 32 Notice**");
 - c. Notice to quit from the Applicant's Representative addressed to the Respondent at the Property dated 14 August 2020 ("**Notice to Quit**") notifying the Respondent that she was required to remove from the Property on or before 9 November 2020;
 - d. Notice under section 33 of the 1988 Act from the Applicant's Representative addressed to the Respondent at the Property dated 14 August 2020 ("**Section 33 Notice**") and giving notice that the Applicant required possession of the Property on or before 14 February 2021;
 - e. Certificate of service (but not the attachments referred to in it) by Graeme Kirk, sheriff officer, of Kirk & Co, certifying that personal service was made to the Respondent on 14 August 2020 of a letter from the Applicant's Representative dated 13 August 2020 (which the Applicant's Representative explained during the CMD to be an explanatory letter), notice to quit, form AT6 and notice under section 33 of the 1988 Act;
 - f. Section 11 notice to the local authority sent on 21 May 2021, together with an acknowledgement of receipt dated 26 May 2021;
 - g. Letter from the Applicant's Representative to the Respondent dated 17 May 2021, which appeared to have been issued in connection with the coronavirus pre-action requirements in relation to seeking an order for possession (but did not expressly reference those requirements); and
 - h. Statements of account in respect of the periods (i) from 8 August 2019 to 11 August 2020 and (ii) from 8 March 2020 to 13 May 2021 ("**Original Rent Payments Schedules**"), which showed an outstanding balance of rent of £9,940.60 as at 13 May 2021.
4. A notice of acceptance of the application was issued by the Tribunal dated 10 June 2021 under rule 9 of the HPC Rules ("**Notice of Acceptance**"), which confirmed that the application paperwork had been received by the Tribunal on 27 May 2021.
5. The Applicant's Representative and the Respondent were each respectively sent a letter by the Tribunal dated 16 June 2021 confirming that the application had

been received, intimating the date and time of the CMD and noting that written representations from the Respondent must be received by 7 July 2021. The Respondent did not provide any written representations to the Tribunal in advance of the CMD.

6. The Tribunal was provided with a certificate of execution of formal service from Euan McLaughlin, sheriff officer of Stirling Park, stating that the case papers, letter and other documentation were served on the Respondent personally on 17 June 2021.
7. On 1 July 2021, the Applicant's Representative provided an updated rent payments schedule in respect of the period from 8 March 2020 to 1 July 2021 ("**Updated Rent Payments Schedule**") which showed an outstanding balance of £10,915.60 and, in the conjoined case, applied to the Tribunal to amend the sum claimed (to which consent was granted by the Tribunal).
8. This decision arises out of the CMD.

PROCEEDINGS

9. The Legal Member explained that the application had been brought in terms of rule 66 and so the Applicant was seeking an order for possession in terms of section 33 of the 1988 Act on termination of a short assured tenancy.
10. The Applicant's Representative confirmed that, as far as he was aware, the Respondent was still in occupation of the Property.
11. The Applicant's Representative confirmed that there had been no contact from the Respondent either with him/his firm or the letting agents (whom he had checked with on the morning of the CMD).
12. The Applicant's Representative confirmed that no payment had been made by the Respondent since 11 December 2020 and that the Updated Rent Payments Schedule accurately set out the amount outstanding as at 1 July 2021. He noted that further amounts had now also fallen due but acknowledged that the amount claimed (in the conjoined case) was limited to that previously intimated.
13. The Applicant's Representative explained that there had been discussions with the Respondent during 2020 about a pattern of arrears and arrangements made to address these, at which time the Applicant had an expectation that a lump sum payment would be made in respect of arrears but no such payment had been forthcoming.
14. The Applicant's Representative explained that very little was known about the Respondent's circumstances but that she may have been operating a business from the Property. He also noted that Broomberry Drive was a sought after address in Gourrock.
15. The Applicant's Representative highlighted that there had been a prolonged period of non-payment and that there was no prospect of the rent being paid in the foreseeable future.

16. The Applicant's Representative confirmed that the Applicant was seeking an order for possession in terms of section 33 of the 1988 Act and that he was not seeking to rely on the form AT6 provided with the application.

17. When asked about the date of removal referenced in the Section 33 Notice, the Applicant's Representative noted that he didn't recognise any fatal flaw in it.

FINDINGS OF FACT

18. The Applicant and Peter Leon are the registered proprietors of the Property which is registered under title number REN95722. The Applicant is the registered landlord in respect of the Property. The tenancy granted under the Tenancy Agreement was granted only by the Applicant. However, the tenancy appears to have operated in this way for a number of years.

19. The Tenancy Agreement contained the following terms:

- a. The initial term was for 6 months, from and including 9 August 2013, and expiring on 9 February 2014 and after that the term continued on a calendar monthly basis;
- b. The initial rent was £975 monthly and was to be reviewed annually;
- c. The rent was payable in advance from 9 August 2013 by equal payments of cleared funds on the 1st of each month; and
- d. A deposit of £1,075 was payable on signing the Tenancy Agreement. This is noted on the Updated Rent Payments Schedule as being "held by tenancy as at 01/07/2021".

20. Notwithstanding that the date of signing of the Section 32 Notice was the same as that of the Tenancy Agreement and the time of signing of each had not been annotated, the confirmation statement on the Section 32 Notice stated "I hereby confirm that this notice was served on me and signed by me before any other documentation relating to the property and the proposed tenancy being created on it to which this notice refers". In addition, the Tenancy Agreement narrated that "The Tenant acknowledges that, before the tenancy was entered into the Tenant received a valid AT5 Notice in the prescribed form..." The term of the tenancy was for a "term of not less than six months". Therefore, the Tribunal was satisfied, on the balance of probabilities, that the tenancy was a short assured tenancy as defined in section 32 of the 1988 Act.

21. Clause 6 of the Tenancy Statement states that: "The Landlord may end the tenancy by giving not less than two months notice in writing expiring at any time on or AFTER the initial term of this Agreement."

22. The Notice to Quit brought the tenancy to an end on a possible ish date (namely 9 November 2020), allowed for an adequate period of notice (including the contractual period of notice required in terms of the Tenancy Agreement) and contained the information prescribed in The Assured Tenancies (Notices to Quit

Prescribed Information) (Scotland) Regulations 1988 (as amended). Accordingly, it met the requirements for a valid notice to quit.

23. The Section 33 Notice met the requirements of section 33(1)(d) of the 1988 Act but did not bring the statutory tenancy to an end on a possible finish date. This is addressed further below.
24. Given the nature of the application, the Tribunal did not require to consider the copy form AT6 provided.

REASONS FOR DECISION

25. Section 33(1) of the 1988 Act (as amended from 7 April 2020 and currently in force) provides that "...the First-tier Tribunal may 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; and
- e. that it is reasonable to make an order for possession."

26. The Tribunal was satisfied, on the balance of probabilities, that tacit relocation was not operating (as a result of the service, and expiry of the period of notice under, the Notice to Quit), that the Respondents had been given notice that the Applicant required possession of the house (as a result of the service, and expiry of the period of notice under, the Section 33 Notice, albeit not expiring on an ish date) and that it would be reasonable in the particular circumstances of this case to grant an order for possession.

27. In considering whether or not it would be reasonable to grant an order for possession, the Tribunal took into account that the Respondent had not engaged with the Tribunal in relation to this case, had not raised any objection to the application for the order for possession, had arrears totalling over 11 months' worth of rent and had (on the evidence of the Applicant's Representative, which appeared to the Tribunal to be credible) not engaged with the Applicant's Representative or the letting agents in relation to the tenancy for a significant period of time and there was no reason to believe that this would change.

28. The Tribunal also considered that it may grant the order and that it was reasonable to do so, notwithstanding that the date for recovery of possession in the Section 33 Notice was not a possible ish date. This was in light of the overriding objective of the Tribunal (as set out in HPC Rule 2). The Tribunal did not consider that it would be just or proportionate to reject the application for that reason (and so require the Applicant to serve a fresh section 33 notice and wait a further 6 months before being entitled to apply for an order for possession) given that the Respondent had

received a period of 6 months' notice, 9 March 2021 (the first possible ish date after 14 February 2021) was a date in the past, the application to the Tribunal was made more than 3 months after the date for recovery of possession noted in the Section 33 notice had passed and a period of over 11 months had now passed since the Notice to Quit and Section 33 Notice had been served.

29. The Tribunal was satisfied, on the balance of probabilities, that the spirit and intent of the Coronavirus (Scotland) Act 2020 (and related legislation) with regard to the introduction of the extended notice periods had been met, even if the date for recovery of possession in the Section 33 Notice was not a possible ish date. Accordingly, the Respondent was being afforded the protection intended by that legislation and so the Tribunal did not perceive that detriment would be caused to the Respondent as a result of the Section 33 Notice not having specified a possible ish date.

DECISION

30. The Tribunal decided that an order be granted against the Respondent for possession of the Property under section 33 of the 1988 Act.

31. The order referred to in the preceding paragraph was intimated orally to the Applicant's Representative by the Legal Member during the CMD.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P S Woodman

Chair (Legal Member)

28 July 2021

Date