



**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/21/2122

Re: Property at 99 Nigel Rise, Livingston, EH54 6LX (“the Property”)

Parties:

Mr Christopher Donald, 1 Muirhall Steadings, Auchengray, ML11 8GX (“the Applicant”)

Ms Sharon Jollie, 99 Nigel Rise, Livingston, EH54 6LX (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Frances Wood (Ordinary 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 2 September 2021, 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 1 July 2014 and, if not terminated on 1 July 2015, 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 18 June 2014, a Notice given under Section 33 of the 1988 Act and a Notice to Quit, both Notices requiring the Respondent to vacate the Property by 1 September 2021, with proof of delivery of both Notices on 26 February 2021.

On 25 October 2021, 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 15 November 2021. 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 1 December 2021. Both Parties participated in the call and the Respondent was assisted by her practice manager, Ms Anne Hendry. The Applicant told the Tribunal that the Respondent had been an ideal tenant but that, due to accumulating debt, which included a mortgage over the Property and the liability to repay a bounceback loan taken out during the COVID-19 pandemic, it was necessary for the Property to be sold. The Respondent told the Tribunal that she fully accepted the reason for the Applicant seeking the Order for Possession and that she considered it reasonable for the Order to be granted.

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 if, in terms of the Coronavirus (Scotland) Act 2020, it considered it reasonable to do so.

The Tribunal noted that the Respondent had stated that she fully understood the reason for the Applicant seeking an Order for Possession and that she considered it reasonable for the Order to be made.

Having considered carefully all the evidence before it, the Tribunal decided that it was reasonable to make an Order for Possession and that it was not necessary to hold a Hearing.

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:

Date: 01/12/2021