



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/22/1849

Re: Property at 146 Izatt Avenue, Dunfermline, Fife, KY11 3BB (“the Property”)

Parties:

Trs of Patricia Richards Personal Injury Trust, 7th Floor, Delta House, 50 West Nile Street, Glasgow, G1 2NP (“the Applicant”)

Miss Leanne McLaughlin, 146 Izatt Avenue, Dunfermline, Fife, KY11 3BB (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Ms E Williams (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted in favour of the Applicant.

Background

1. This is an application received on 14th June 2022 and made in terms of Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (‘the Rules’). The Applicant is the landlord of the Property, and the Respondent is the tenant, in terms of a tenancy agreement that commenced on 5th December 2016 until 4th June 2017, and monthly thereafter, at an agreed rent per month of £550.
2. The Applicant’s representative lodged a copy of the short assured tenancy agreement, section 11 notice with evidence of service, and Notice to Quit and section 33 notice dated and served on 4th June 2021, and requiring the Respondent to quit by 4th December 2021, with evidence of service.
3. Service of the application and notification of a Case Management Discussion was served upon the Respondent by Sheriff Officers on 29th July 2022.

The Case Management Discussion

4. A Case Management Discussion took place by telephone conference on 12th September 2022. Neither party was in attendance. The Applicant was represented by Mr Stuart Craig, Solicitor.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the Hearing, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 17(2) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondent upon the representations of the Applicant and the material before the Tribunal.
6. Mr Craig moved the Tribunal to grant the order sought.
7. Responding to questions from the Tribunal concerning why the Notice to Quit was entitled 'Notice to Leave' and whether this would affect its validity, Mr Craig said it was a minor error in the document. The words 'Notice to Quit, were correctly used in the prescribed information, and using the reasonable recipient test, the recipient could be in no doubt of the meaning of the notice.
8. Responding to questions from the Tribunal regarding reasonableness, Mr Craig said the Respondent has been in rent arrears for over two years. She is in employment and there is no housing benefit in payment. She has not responded to the notices. Mr Craig was unaware of whether the Respondent has any dependants living with her. The Applicant believes the Respondent may have left the Property. The same laundry has been on the washing line for months, the bins have not been put out for months, and the garden is in a poor state. The Respondent has told Mr Craig's office several times that she is returning the keys but has not done so. This would tend to suggest she has another property.
9. The Tribunal adjourned to consider its decision. The Tribunal decided it was reasonable in all the circumstances to grant the order sought.

Findings in Fact and Law

10.
 - (i) Parties entered into a short assured tenancy agreement in respect of the Property that commenced on 5th December 2016 until 4th June 2017, and monthly thereafter.
 - (ii) Notice to Quit and Section 33 Notice dated 4th June 2021 were served on the Respondent, requiring the Respondent to quit by 4th December 2021.
 - (iii) The short assured tenancy has reached its ish date.

- (iv) The contractual tenancy terminated on 4th December 2021.
- (v) Tacit relocation is not in operation.
- (vi) The Applicant has given the Respondent notice that they require possession of the Property.
- (vii) It is reasonable to grant the order for possession.

Reasons for Decision

11. Section 33 of the Act provides that the Tribunal may make an order for possession if satisfied that the short assured tenancy has reached its finish, tacit relocation is not operating, the landlord has given notice to the tenant that they require possession, and it is reasonable to make the order.
12. The contractual tenancy has been terminated and tacit relocation is not in operation. The Applicant has given the Respondent notice that they require possession of the Property. The Tribunal considered the inclusion of 'Notice to Leave' in the Notice to Quit to be a minor error, and that the reasonable recipient could be in no doubt of what was required of them by the notice.
13. The Respondent did not appear at the CMD. In considering reasonableness, the Tribunal took into account the representations made regarding the circumstances of the Applicant and the Respondent. In all the circumstances, the Tribunal considered it reasonable to grant the order.

Decision

14. An order for possession of the Property is granted in favour of the Applicant under section 33 of the Housing (Scotland) Act 1988.

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.

H Forbes

Legal Member/Chair

12th September 2022
Date