



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/22/3227

Re: Property at 3 Candacraig Cottages, Candacraig, Strathdon, Aberdeenshire, AB36 8US (“the Property”)

Parties:

Mr George Falconer Wallace, Mr Robert Charles Wallace, c/o Land Management (Scotland) Ltd, Haer Cairn, Finavon, Forfar, DD8 3QH (“the Applicant”)

Mr Angus Marshall, 3 Candacraig Cottages, Candacraig, Strathdon, Aberdeenshire, AB36 8US (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and David Fotheringham (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.

Background

1. An application was received under rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession of the property under a short assured tenancy granted by the Applicant to the Respondents.
2. The application contained :-

- A copy of the tenancy agreement,
 - a copy of the AT5,
 - a copy of Assignment letter,
 - a copy of the Section 33 Notice,
 - a copy of the Notice to Quit,
 - evidence of service, and
 - Section 11 Notice.
3. The Notice of the Hearing had been served on the Respondent by sheriff officers on 23 November 2022. The case had called for a case management discussion on 9 January 2023. The applicant's agent, Mr Doran of Raeburn, Christie, Clark and Wallace LLP and agent for the respondent, Ms Zdravkova of CLAO both appeared.
4. The parties' agents had submitted correspondence on 6 January 2023 confirming that the respondent was not opposed to the order being granted and accepted that the application was competent. Further, that the landlord had made an undertaking not to enforce the Order for Eviction until 3 April 2023 to allow the respondent to move into alternative suitable accommodation. The parties were therefore making a joint motion to a. find that the short assured tenancy reached its end on 30 August 2022; b. that tacit relocation is not operating; c. that the landlord had provided the respondent with 2 months' notice that they require possession of the property in terms of s33 of the Housing (Scotland) Act 1988; and d. that it is reasonable to make an order for possession; and to grant the order for eviction as craved.

Case Management Discussion

5. Both agents confirmed that they still sought to move the motion and there was no opposition to the order for eviction. The respondent had approached the council and was seeking a tenancy from the council.

Findings in Fact

6. We found the following facts established:-
7. That there was in place a short assured tenancy.
8. That there was a tenancy agreement between the Applicant and the Respondent in respect of the Property.
9. The tenancy commenced on 1 April 2002 for an initial period until 30 September 2002.
10. After the initial period of 6 months the tenancy agreement would continue on a monthly basis.
11. The AT5 Form was in the prescribed format and was dated 15 and 18 March 2002.
12. The notice to quit and section 33 notices contained the prescribed information, and both were dated 23 June 2022, both sought vacant possession as of 30 August 2022. Both provided more than 2 months' notice that vacant possession was sought. There was evidence of service of the notices.
13. There was a section 11 notice addressed to the local authority.

Reasons for Decision

14. Section 33 of the 1988 Act requires the tribunal to grant an order for possession under a short assured tenancy where: the tenancy has reached its end; tacit relocation is not operating; no further contractual tenancy for the time being is in existence; the landlord has given notice to the tenant that they require possession of the house; and where it is reasonable to do so.

15. We were satisfied that a short assured tenancy had been created. We were satisfied with the terms of the section 33 notice and the notice to quit. We were also satisfied that these notices had been served on the Respondent. We also noted that a section 11 notice has been sent to the local authority.

16. Having regard to the question of reasonableness, the respondent did not object to the order being granted. It was a joint motion to grant decree and that it was reasonable to grant the order. We consider therefore that it would be reasonable to grant the order for eviction.

17. We were satisfied that all of the requirements of section 33 had been met and we consider that it would be reasonable to grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.

18. We observe that the landlord has given a written undertaking not to enforce the order for eviction until 3 April 2023 in order to give the respondent time to obtain and move into alternative accommodation.

Decision

19. We grant an order in favour of the Applicant against the Respondent for recovery of possession of the property.

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.

9 January 2023



09/01/2023

Legal Member

Date