



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/20/1322

Re: Property at 11 Liff Crecent, Dundee, DD2 4JZ (“the Property”)

Parties:

Mr David Bruce, 53 Old Glamis Road, Dundee, DD8 8JJ (“the Applicant”)

Miss Caroline Murphy, 11 Liff Crecent, Dundee, DD2 4JZ (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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

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 under a short assured tenancy by the Applicants against the Respondent for the property.
2. The application contained :-
 - A copy of the tenancy agreement,
 - a copy of the AT5,
 - a copy of the Section 33 Notice,
 - a copy of the Notice to Quit,
 - receipt of recorded delivery post, and
 - Section 11 Notice and evidence of service.
3. The Notice of the Hearing had been served on the Respondent by sheriff officers on 22 September 2020.

4. Today's case management discussion was held by telephone conference call. Mr Campbell agent for the Applicant attended. There was no appearance by the Respondent. I was satisfied that the Respondent had had notice of today's hearing I was prepared to proceed in her absence.

Case Management Discussion

5. The Applicant's agent advised that they sought an order for repossession in terms of section 33 of the Housing (Scotland) Act 1988. I noted the papers lodged in support of the application, including the tenancy agreement, AT5, notice to quit, Section 33 notice, section 11 notice and certificate of service.
6. The Applicant's agent addressed me on the service of the notice to quit and section 33 notice by attempted recorded delivery service, it was noted that it had been unsuccessful. He advised that the notices had also been sent by first class recorded delivery mail. He advised that he had, as the agent for the Applicant also hand delivered the notices, by attending at the property on 17 September 2020 and posting them through the letter box.

Findings in Fact

7. I found the following facts established:-
8. That there was a tenancy agreement between the Applicant and the Respondent in respect of the property.
9. That it had commenced on 13 April 2016 for an initial period of 6 months until 14 October 2016. The agreement was for an initial period of 6 months and it continued on a monthly basis thereafter.
10. The tenancy agreement had been signed by the parties on 8 April 2016.
11. The AT5 Form was in the prescribed format and there was evidence that it had been given to the Respondent prior to the creation of the tenancy agreement.
12. The notice to quit and section 33 notices contained the prescribed information, and both were dated 17 September 2019, both sought vacant possession as at 14 December 2019. Both provided more than 2 months' notice that vacant possession was sought.
13. It appeared that the notice to quit and section 33 notice had been delivered to the Respondent on 17 September 2019 by leaving them at her last known address, namely the property.

Reasons for Decision

14. Section 33 of the 1988 Act requires me 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; and the landlord has given notice to the tenant that they require possession of the house.
15. I was satisfied that a short-assured tenancy had been created.
16. I was satisfied with the terms of the section 33 notice and the notice to quit. Section 54 of the Housing (Scotland) Act 1988 provides that the notices under Part II of the Act (which includes section 33) may be served by a. delivering it to him; b. by leaving it at his last known address; or c. by sending it by recorded delivery letter to him at that address. Section 112 of the Rent (Scotland) Act 1984 sets out statutory criteria for a notice to quit; and section 114 makes provision for notices being served under that Act again by a. delivering it to him; b. by leaving it at his last known address; or c. by sending it by recorded delivery letter to him at that address. As service can take place by leaving it at the Respondent's last known address, I am satisfied that the landlord's agent, attending at the property and posting these notices through the letter box, satisfies the statutory requirements and the notices had therefore been served on the Respondent.
17. As I was satisfied that all of the requirements of section 33 had been met, I consider that I am therefore required to grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.

Decision

I 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.

Melanie Barbour

22 October 2020

Legal Member/Chair

Date