



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/20/1526

Property: 15D Sandeman Street, Dundee DD3 7NP ("Property")

Parties:

Northwood Dundee Ltd, 2 Panmure Street, Dundee DD1 2BW ("Applicant")

Bannatyne Kirkwood France & Co, 16 Royal Exchange Square, Glasgow G1 3AG ("Applicant's Representative")

Claire Townsend, 15D Sandeman Street, Dundee DD3 7NP ("Respondent")

Tribunal Members:

Joan Devine (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined that an order for possession of the Property should be made.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Short Assured Tenancy Agreement signed by the Applicant and the Respondent dated 5 September 2017; Notice signed by the Applicant and the Respondent under section 32 of the Housing (Scotland) Act 1988 ("1988 Act") dated 5 September 2017 ("AT5"); Notice to Quit dated 20 March 2019 addressed to the Respondent; post office receipt evidencing service on the Respondent of the Notice to Quit dated 20 March 2019; Notice in terms of section 33 of the 1988 Act dated 11 February 2020; Sheriff Officer's certificate of service evidencing service of the Section 33 Notice on the Respondent on 13 February 2020; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 16 July 2020 and certificate of service by Sheriff Officer evidencing service of a letter from the First-tier Tribunal enclosing a full set of papers on the Respondent on 20 October 2020. There was also produced to the Tribunal a head lease between Azeem Younis and the Applicant dated 20 May

2013 in respect of the Property, a supplemental agreement between Azeem Younis and the Applicant dated 31 January 2017 and an email dated 21 September 2020 from Zaheer Younis to the Applicant in which he stated that the Property had been let since 15 June 2011 and during that time he had been happy for his brother, Azeem Younis to act as landlord for the duration of the rental period.

Case Management Discussion ("CMD")

A CMD took place on 18 November 2020 at 2pm by conference call. The Applicant was represented by Kirstie Donnelly of the Applicant's Representative. There was no appearance on behalf of the Respondent. The Tribunal noted that the documentation produced indicated that the owner of the Property had authorised his brother, Azeem Younis, to act as his agent to enter into leases for the Property. Azeem Younis had then entered into a head lease with the Applicant in respect of the Property which was in place at the time the Applicant entered into a tenancy agreement with the Respondent. Clause 5.1 of the head lease permitted sub-letting. Ms Donnelly confirmed that narration of the position was correct. Ms Donnelly stated that the section 33 Notice was served prior to the implementation of the Coronavirus (Scotland) Act 2020 and therefore possession of the Property was sought on a mandatory ground.

Findings in Fact

The Tribunal made the following findings in fact:

1. Title to the Property is in the name of Zaheed Younis. The date of entry per the title sheet was 16 March 2007.
2. Zaheed Younis authorised his brother Azeem Younis to act as his agent to enter into leases for the Property.
3. Azeem Younis entered into a head lease with the Applicant dated 20 May 2013 regarding the Property. The Head Lease allowed the Applicant to sub-let the Property. The head lease was for a period of one year commencing 22 April 2013.
4. By a supplemental agreement dated 31 January 2017 the head lease was extended to 22 April 2018
5. The Applicant and the Respondent had entered into a tenancy agreement dated 5 September 2017.
6. The Applicant and the Respondent had signed the form AT5 on 5 September 2017.

7. The tenancy was for the period 13 October 2017 to 13 April 2018 and unless terminated would continue thereafter on a two monthly basis.
8. A Notice to Quit dated 20 March 2019 was served on the Respondent on 20 March 2019 stating that the tenancy would terminate on 13 June 2019.
9. A Notice in terms of Section 33 of the 1988 Act dated 11 February 2020 was served on the Respondent by Sheriff Officer on 13 February 2020 stating that possession of the property was required on 13 April 2020.
10. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 16 July 2020.
11. Notice of the date of the hearing had been given to the Respondent on 20 October 2020.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act. The Tribunal noted that the tenancy had been properly created as a short assured tenancy. The Tribunal noted that a Section 33 Notice had been served on the Respondent more than two months prior to the ish. In all of the circumstances, it was appropriate for an Order to be made.

Decision

The Tribunal grants an Order for 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.

Joan Devine (Legal Member)

Date : 18 November 2020