



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/20/2113

Re: Property at 36 Boghall Drive, Bathgate, West Lothian, EH48 1SF (“the Property”)

Parties:

Mr Robert Gillies, 7/42 Murieston Road, Edinburgh, EH11 2JJ (“the Applicant”)

Mr Jerzy Berezynski, 36 Boghall Drive, Bathgate, West Lothian, EH48 1SF (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member)

Decision (in absence of the Respondent)

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

FINDINGS IN FACT

1. The Applicant was the landlord, and the Respondent the tenant, of the Property under and in terms of a Short Assured Tenancy Agreement which commenced on 1 December 2008 and had an initial duration of 1 year, continuing month to month thereafter.
2. By notice dated 14 February 2020 and served on 19 February 2020, the Applicant gave notice to quit and notice under section 33(1)(d) of the Housing (Scotland) Act to the Respondent, providing that the Respondent required to remove from the property and that the Applicant required possession of the property by 1 May 2020.
3. The Respondent remains in the Property.

FINDINGS IN FACT AND LAW

1. The tenancy reached its end at 1 May 2020.
2. Tacit relocation is not operating, the Applicant having given Notice to Quit to the Respondent to stop tacit relocation on 1 May 2020.
3. The Applicant having given notice in terms of section 33(1)(d) of the Housing (Scotland) Act 1988, the requirements of section 33 are met.

STATEMENT OF REASONS

1. This application called for its Case Management Discussion by teleconference on 1 December 2020. The applicant was present on the call. The Respondent was neither present nor represented.
2. In this Application the Applicant seeks an eviction order against the Respondent under and in terms of section 33 of the Housing (Scotland) Act 1988.
3. In terms of Rule 17 of the First-tier Tribunal Rules of Procedure, the Tribunal is empowered to do anything at a Case Management Discussion that it may do at a Hearing, including make a Decision. In terms of Rule 2, the Tribunal is required to have regard to the overriding objective to deal with proceedings justly when making a decision, including by avoiding unnecessary delay.
4. In the Application, the Applicant makes the following assertions:-
 - a. The Applicant was the landlord, and the Respondent the tenant, of the Property under and in terms of a Short Assured Tenancy Agreement which commenced on 1 December 2008 and had an initial duration of 1 year, continuing month to month thereafter.
 - b. By notice dated 14 February 2020 and served on 19 February 2020, the Applicant gave notice to quit and notice under section 33(1)(d) of the Housing (Scotland) Act to the Respondent, providing that the Respondent required to remove from the property and that the Applicant required possession of the property by 1 May 2020.
 - c. The Respondent remains in the Property.
5. The Respondent has been afforded an opportunity to dispute the matters set out in the Application and supporting documentation, but has not done so. I therefore consider that those matters are not in dispute.
6. In terms of the Housing (Scotland) Act 1988:-

33.— Recovery of possession on termination of a short assured tenancy.

- (1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied—
 - (a) that the short assured tenancy has reached its ish;
 - (b) that tacit relocation is not operating; and
 - [...]
 - (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.
 - (2) The period of notice to be given under subsection (1)(d) above shall be—
 - (i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;
 - (ii) in any other case, two months.
 - (3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.
 - (4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that ish shall end (without further notice) on the day on which the order takes effect.
 - (5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”
7. Section 33 of the 1988 Act affords no discretion. If the requirements of section 33 are met, then the Tribunal must grant the order. Whilst the Coronavirus (Scotland) Act 2020 altered that position for notices served after 7 April 2020, we are dealing with a notice dated 14 February 2020 and served on 19 February 2020.
8. The Short Assured Tenancy Agreement reached its ish on 1 May 2020. Tacit relocation was no longer operating, the Applicant having given Notice to Quit to the Respondent on a period of 2 months as required by the tenancy agreement. The Applicant had also given notice in terms of section 33(1)(d) of

the 1988 Act, providing a period of notice in excess of two months. That being so, the requirements of section 33 are met and I must grant the order.

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.

1 December 2020

Andrew Upton
Legal Member/Chair

Date