

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/18/3114

**Re: Property at 40 Avon House, The Furlongs, Hamilton, ML3 0BL (“the
Property”)**

Parties:

**Mr Cameron Barclay, Annfield Cottage, Glassford, Strathaven, ML10 6TX (“the
Applicant”)**

**Mr Thomas Butler, 40 Avon House, The Furlongs, Hamilton, ML3 0BL (“the
Respondent”)**

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision (in absence of the Respondent)

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

Background

An application was received on 19 November 2018 under rule 66 of Schedule 1 to 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 by the applicant against the respondent.

The application included: the tenancy agreement; a copy of the form AT5; a copy of the notice required under section 33 of the 1988 Act (‘the section 33 notice’); and a copy of the Notice to Quit, together with proof of delivery of the Notice to Quit and section 33 notice.

Notice of the case management discussion, together with the application papers and guidance notes, had been served on the respondent by sheriff officers on behalf of the tribunal on 7 January 2019.

Two emails were received from the respondent on 22 January 2019 with some brief written representations. He stated in one of these emails that he would attend the case management discussion on 23 January.

The Case Management Discussion

A case management discussion was held on 22 January 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was present and gave evidence on his own behalf. The respondent was not present and was not represented.

The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a case management discussion had been duly complied with. It was clear from the emails sent by the respondent on 22 January that he was aware of the case management discussion. The tribunal delayed the start of the discussion by 15 minutes, in case the respondent had been detained. He did not appear, however, and no telephone calls or messages had been received from him. The tribunal therefore proceeded with the case management discussion in the absence of the respondent.

The applicant asked the tribunal to grant an order against the respondent for recovery of possession of the property.

Findings in Fact

The tribunal made the following findings in fact:

- The applicant owns the property jointly with his wife, Helen Barclay. He is the landlord named on the tenancy agreement with the respondent, and is the registered landlord of the property, with Mrs Barclay named as a joint owner on the landlord register.
- There was a tenancy in place between the applicant and the respondent. The tenancy commenced on 17 November 2017 for an initial period of 6 months until 16 May 2018 (incorrectly stated to be 16 May 2017 on the tenancy agreement). It then continued on a monthly basis thereafter until terminated by either party giving no less than two months' notice to the other party.
- The AT5 form was in the prescribed format and had been signed by the applicant on 17 November 2017. The tenancy agreement had been signed by the parties on the same date. The tribunal was therefore satisfied that there had been a short assured tenancy in place between the parties.
- Both the Notice to Quit and section 33 notice contained the prescribed information and both were dated 6 September 2018. These notices stated that

the applicant required vacant possession of the property on or before 16 November 2018.

- The tenancy therefore reached its end on 16 November 2018.
- There was evidence that the Notice to Quit and section 33 notice had been sent by recorded delivery, with proof of delivery on 10 September 2018, providing more than two months' notice of vacant possession. The tribunal was therefore satisfied that these notices had been validly served on the respondent.

Reasons for decision

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; and the landlord has given notice to the tenant that they require possession of the house. The tribunal is satisfied that these requirements have been met. The tribunal is therefore required to grant an order for possession under section 33 of the 1988 Act.

Decision

The tribunal grants 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.

S O'Neill

Legal Member/Chair

23/11/19

Date