



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

Reference number: FTS/HPC/EV/21/1869

Order granted on 2 November 2021 in absence of the Respondent

Property: 34 Fraser Walk, Kilmarnock, KA3 7PH

Parties:

John Jones and Moira Jones, residing together at 1 Lenmead, Harrietsham, Maidstone, Kent, ME17 1FA ("the Applicant")

Ainsley McFadzean, residing at 34 Fraser Walk, Kilmarnock, KA3 7PH ("the Respondent")

Tribunal Members:

Paul Doyle (Legal Member)

Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") makes an order for possession of the Property in terms of section 33 of the Housing (Scotland) Act 1988.

Background

The Applicant sought recovery of possession of the Property in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Applicant had lodged with the Tribunal Form E. The documents produced were a Tenancy Agreement, a Notice to Quit and s.33 notice, both served on 14 January 2021, together with a notice under s.11 of the Homelessness (Scotland) Act 2003. A copy land certificate was lodged with the Tribunal which showed that the applicants are joint heritable proprietors of the Property.

Case Management Discussion

A case management discussion took place by telephone conference at 10am on 2 November 2021. The Applicant was represented by Mr A Hall of Homesure Portfolio

Management. The hearing was delayed to allow sufficient time for the respondent to participate, but there was no appearance by or on behalf of the Respondent.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a short-assured tenancy Agreement for the Property dated 28 January 2013. The lease initially ran from 28 January 2013 to 28 July 2013.
2. The rent in terms of the Tenancy Agreement was £475.00 per month.
3. The Tenancy Agreement set out the grounds on which the Landlord could seek recovery of possession of the Property in terms of Schedule 5 of the 1988 Act.
4. A notice to quit and a s.33 notice were served on the Respondent on 14 January 2021. The tenancy is a short-assured tenancy and the respondent received the notice to quit and the s.33 notice timeously. The s.33 notice brought the tenancy to an end on 28 July 2021.
5. The Applicant sought recovery of possession of the Property in terms of s.33 of the Housing (Scotland) Act 1988 because the short-assured tenancy had been brought to an end on 28 July 2021 by the service of the s.33 notice.
6. Notice of today's hearing was served on the respondent on 28 September 2021. The respondent surrendered possession of the property on 4 October 2021 and offers no resistance to this application.
7. The respondent has no competent answer to the application for repossession.

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 tenancy was a short-assured tenancy. Correct notice was given which brought the short-assured tenancy to an end on 28 July 2021. The basis for possession set out in s.33 of the 1988 Act is established. The respondent offers no defence to the application. The finite time for occupancy of the property as a short-assured tenancy has come to an end. For these reasons, the Tribunal determined to grant an Order for possession.

Decision

For the foregoing reasons, the Tribunal determined to make an Order for possession.

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.

P. Doyle

2 November 2021

Legal Member