



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 (“the Act”)

Chamber Ref: FTS/HPC/EV/22/4156

Re: Property at Flat 0/1, 44 Cherrybank Road, Glasgow, G43 2NQ (“the Property”)

Parties:

Mr Akif Polat, 25 Fenwick Road, Giffnock, Glasgow, G46 6AU (“the Applicant”)

Miss Kathryn Mitchell, Flat 0/1, 44 Cherrybank Road, Glasgow, G43 2NQ (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant should be granted an Order for Possession of the Property against the Respondent under s33 of the Act

Background

1. The Applicant was the owner of the Property, which he had let to the Respondent under a Short Assured Tenancy in 2016. The Applicant had sought the return of the Property by serving a Notice to Quit and a s33 Notice under the Act on the Respondent. The Applicant sought possession of the Property from 29 October 2022. The Respondent had not removed from the Property. The Applicant made an application to the Tribunal seeking an order for possession of the Property
2. A Case Management Discussion (CMD) was held before the Tribunal on 16 March 2023 at 2pm. The Applicant was present and represented himself. The Respondent was present and represented herself.

3. The Applicant advised the Tribunal that he had decided to sell the Property as he required to raise funds for work he was carrying out to his own Property. The Respondent advised that she had not removed from the Property as she had a child at school and was keen to remain in the area. She had been unable to locate an alternative property in the area.
4. The Tribunal noted the terms of the paperwork before it at the first CMD. The Applicant had submitted a copy of a lease to the Respondent dated 8 March 2017. There was also an AT5 dated 7 March 2017. However, the Tribunal noted that the start date in the lease was 29 October 2016. If that was the case and occupation had been taken in October 2016, the lease would be an assured tenancy and not a short assured tenancy. Accordingly, the ability to end the tenancy by service of a s33 notice would not be competent.
5. The Respondent helpfully advised that she had kept the various documentation she had been issued with and was able to recover it during the CMD. She advised that she had taken occupation in 2016 with her partner. When she and her partner had split up a new lease had been issued to her in her own name. The Tribunal suspected that the lease before it had been the second lease that had been issued but that the start date of the tenancy had not been updated.
6. However, the Respondent also advised that she had several other leases and AT5's that she had been issued with in her records. Unfortunately, the CMD was being carried out by teleconference and so the Tribunal could not examine the other paperwork that the Respondent had but there appeared from the Respondent's description to have been leases granted in 2016, 2017 and 2018. From the Respondent's verbal description, there also appeared to have been an AT5 issued in 2018.
7. The Tribunal was not satisfied that it had in its possession all the necessary information to allow it to satisfy itself that there was a valid short assured tenancy in place that would allow the Applicant to serve a valid s33 notice. The Tribunal noted that the Respondent had stated she had documentation from 2018 that appeared to suggest a short assured tenancy/AT5 had been served, despite it not being competent to do so from the end of 2017.
8. The Tribunal requested that the parties each provide them with all documentation they had relating to the tenancy. The CMD would be continued to a later date to allow this and the Tribunal could then properly consider the matter.
9. A second CMD took place on 6 June 2023 before the same members of the Tribunal. The Applicant and Respondent were again both present and both represented themselves. In the period between the first and second CMD's the Applicant had submitted a full set of tenancy documents covering up until the last tenancy granted at the end of 2018
10. The Tribunal had before it the following documentation:-

- Tenancy agreement & AT5 between the Applicant and the Respondent and Kossi Amessinou 28 April 2016
- Tenancy Agreements & AT5s between the Applicant and the Respondent dated 29/10/16, 8/3/17, 20/6/18 and 5/12/18
- Title Sheet GLA115451 evidencing ownership of the Property by the Applicant
- Notice to Quit dated 21/6/22
- Section 33 Notice dated 21/6/22
- S11 Homelessness Notice
- Form E application to the Tribunal

Findings in Fact and Law

The Tribunal found the following to be established:-

- The Applicant was the owner of the Property
- The Applicant had let the Property to the Respondent and her then partner on 29 October 2016 under a Short Assured Tenancy at £550 per month
- Thereafter the Applicant granted a further Short Assured Tenancy to the Respondent alone on 8 March 2017 and it had continued on 20 June 2018 and 5 December 2018 on the same rent and terms
- The Applicant had served a valid Notice to Quit and s33 Notice on the Respondent to bring the Short Assured Tenancy to an end
- The Respondent had remained in the Property
- In the circumstances of the case it was reasonable to grant an order for possession in favour of the Applicant against the Respondent. The Applicant wished to sell the Property and the Respondent had confirmed she wished to leave the Property

Reasons for Decision

The Tribunal considered the paperwork before it and the representations of the parties. As set out at paragraph 4-7 above, at the first CMD it had not been apparent whether there was a properly constituted Short Assured Tenancy or not. A complete set of lease documentation had not been provided and the dates often did not match. This led the Tribunal to believe that there may be an assured tenancy in place.

However, at the second CMD, the missing paperwork had been provided and the Tribunal was able to see that a properly constituted Short Assured Tenancy had been granted by the Applicant to the Respondent in 2016 and that this had continued with variation or alteration to the present time. On that basis, there was a Short Assured Tenancy under the Act and the Applicant had served the proper Notice to Quit and s33 Notice. On that basis, the ground for possession had been established under s33 of the Act and it was appropriate for the Tribunal to grant an order.

The Tribunal noted from the Respondent that she had no objection to the order for possession being granted. She had been unable to obtain housing privately and

therefore needed the order for possession to allow the local authority to give her accommodation. She advised that the Applicant had always been reasonable and open with her that he needed the Property back to sell to fund a development of his own house. The Respondent did not object to the grant of the order.

In the circumstances the Tribunal was satisfied that it was reasonable to grant the order.

Decision

The Tribunal determined to grant the Applicant an Order for Possession against the Respondent

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.

E Miller

07 July 2023

Legal Member/Chair

Date