

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/18/0261

Re: Property at Flat 5, 10 Mains Road, Dundee, DD3 7RE (“the Property”)

Parties:

Mr James Adams, 22E Berry Downs Caravan Park, Carnoustie, DD7 7SA (“the Applicant”)

Mr Richard John Christie, Flat 5, 10 Mains Road, Dundee, DD3 7RE (“the Respondent”)

Tribunal Members:

Petra Hennig McFatridge (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background:

On 13 March 2018 the Tribunal accepted for determination an application made on 31 January 2018 by the Applicants through their solicitors J Myles & Company, Solicitors for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988. The Applicants lodged with the application the Short Assured Tenancy Agreement dated 2 November 2015 as well as a copy of the AT5, the Notice to Quit dated 1 September 2017 and S 33 Notice dated 1 September 2017 and the Proof of Recorded Delivery posting with tracking number, which confirmed service by recorded delivery through the Appellant’s on 2 September 2017 and signed for by the Respondent on that day. The bundle also contained the S 11 Notice to the Local Authority under the Homelessness etc (Scotland) Act 2003.

The application was intimated to the Respondent and a Case Management Discussion fixed for 23 May 2018, which was attended by the Respondent Mr

Christie with his legal Representative Rebecca Menzies from the Dundee North Law Centre and by Mr J Myles, the solicitor for the Applicant.

The intimation to the parties included the information that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application.

The Respondent had been given the 14 days notice required in Rule 24 of the Rules of Procedure.

The Hearing:

The Respondent's solicitor and the Respondent confirmed that the application was not opposed and the Respondent, Mr Christie, explained that he had been looking for alternative accommodation since the Notice to Quit had been served on him. He was supported in this by a member of the Housing Support Team of the Council but despite his efforts to date he had not found alternative accommodation. His Representative confirmed that the application was not opposed and that her client was simply asking for time to find alternative accommodation. Mr Myles confirmed that prior to the hearing he had spoken to the Respondent's solicitor who had indicated that they were looking for further time to rehouse the Respondent. Both raised the issue of a mechanism for the Tribunal to delay enforcement. The Legal Member asked them for the legal basis of that request and neither was able to point to any provision in the Rules of Procedure which would replicate the previous options of the Sheriff Court. The only Rule relating to enforcement of decisions is Rule 41, which does not deal with this matter.

Mr Myles undertook to not enforce the order if obtained until 44 days after the date of the Case Management Discussion to allow the Respondent further time to find alternative accommodation. There was no challenge to the application and to the reasons set out in the Application by the Respondent. The Tribunal was satisfied on the basis of the documents lodged that that all requirements for repossession in terms of the Housing Scotland Act 1988 had been complied with. It was accepted that a Notice to Quit and a Notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 had been service on the Respondent 2 September 2017 giving the required 2 months notice in terms of S33 of the Act and the require 40 days notice in the Notice to Quit. Mr Myles, the solicitor for the Applicants referred the Tribunal to S 33 (1) of the Housing (Scotland) Act 1988 and moved for an order for repossession of the property.

The Tribunal concluded that as there facts in this case were not disputed by any representations from the Respondent, it was not necessary to adjourn the case to a hearing.

If the tests of S 33 (1) of the Housing (Scotland) Act 1988 are met there is no discretion for the Tribunal and the order must be granted. All issues were discussed at the hearing and the facts of the case were clear.

Findings in Fact:

1. The Applicants and the Respondents entered into a Short Assured Tenancy on 2 November 2015 with an end date at 3 May 2016 with a continuation on a monthly basis thereafter (Clause 5 of the Tenancy Agreement).
2. Notice to Quit was served on the Respondents by Recorded Delivery on 2 September 2017 advising of the termination of the tenancy on the ish on 3 November 2017.
3. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondents by Recorded Delivery on 2 September 2017 advising of the intention to repossess the premises on 3 November 2017.
4. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
5. The Respondents had remained in the property at the date of the hearing.

Reasons for the Decision:

The Tribunal make the decision on the basis of the written evidence lodged by the Applicants and on the unopposed motion of the Applicant. There was no dispute about the facts of the case.

In terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its ish
2. That tacit relocation is not operating
3. That no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
4. That the landlord has given to the tenant notice that he requires possession of the house.

In this case there was not dispute that the tenancy is a short assured tenancy which had reached its ish on 3 May 2016 and continued thereafter month to month. The landlord had served a notice to quit with the required 40 days notice period on 2 September 2017 for the ish on 3 November 2017 and thus tacit relocation did not operate. The contractual tenancy had come to an end. The landlord had served on the Respondents a notice in terms of S 33 (1) d of

the Housing (Scotland) Act 1988 with the required 2 months notice period on 2 September 2017 to 3 November 2017.

The Tribunal has no discretion in the matter. The conditions for an order for possession in terms of S 33 (1) of the Housing (Scotland) Act 1988 have been evidenced by the Applicants in the documentation lodged and are not disputed. Thus the Tribunal grants the order for possession as per the application.

Decision:

The Tribunal makes an order for possession of the Property under S 33 (1) of the Housing (Scotland) Act 1988.

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 Hennig-McFatridge

Legal Member/Chair

Date

23. May 2018