



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/17/0452

Re: Property at 161 Foresthall Drive, Glasgow, G21 4EL (“the Property”)

Parties:

Miss Joanne McClintock, 34 Westfields, Bishopbriggs, G64 3PL (“the Applicant”)

Miss Denise Blyth, 161 Foresthall Drive, Glasgow, G21 4EL (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland has decided to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988. **The order will be issued to the Applicant after expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.**

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 1 December 2017, the landlord/Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession of the property at 161 Foresthall Drive, Glasgow G21 4EL (“the Property”) under Section 33 of the

Housing (Scotland) Act 1988. The Applicant also stated that she considered she was entitled to repossession of the property on a number of grounds of repossession under Section 19 and schedule 5 of the Housing (Scotland) Act 1988 based on the tenant's/Respondent's alleged failure to pay rent, give access to the Property and maintain the garden.

2. On 14 December 2017 the Tribunal gave notification of acceptance of the application to the Applicant and the Respondent under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
3. On 28 December 2017 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 15 January 2018. The Tribunal advised both parties on 28 December 2017 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 31 January 2018. This paperwork was served on the Respondent by Andrew Fraser, Sheriff Officer, Glasgow on 28 December 2017 and certificate of execution of service was received by the Tribunal administration.
4. The Respondent did not make any written representations by 15 January 2018. The Applicant provided the Tribunal with further correspondence in support of her application and intimated that she wished to be represented at the Case Management Discussion by a relative. A copy of this further correspondence from the Applicant was sent to the Respondent by recorded delivery post on 24 January 2018.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 31 January 2018. The Applicant appeared with her uncle as her representative. The Respondent did not appear and was not represented.
6. The Tribunal made enquiries as to the tenancy that existed between parties. With her application, the Applicant had supplied the Tribunal with a copy Short Assured Tenancy between the Applicant and the Respondent for the Property dated 7 December 2016 and 3 January 2017 with a date of commencement of 1 February 2017 and a termination date of 1 August 2017. The tenancy continued monthly thereafter. She had also provided a copy AT5 Form dated 27 June 2012 and signed by the Respondent. The Applicant explained during the Case Management Discussion that the Respondent had been a tenant at the property since 2012 and that the Short Assured Tenancy and an AT5

Form had been dropped off with the Respondent who had returned a copy of the Short Assured Tenancy, which she had dated 3 January 2017 to the Applicant. The Short Assured Tenancy (“the tenancy”) commenced on 1 February 2017 and continued until 1 August 2017 and then on a monthly basis thereafter.

7. The Applicant indicated that on 27 September 2017 a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) 1988 was served on the Respondent to the effect that the Applicant intended to take repossession of the property on 1 December 2017. The Applicant explained that she had also served a Form AT6 Notice under Section 19 of the Housing (Scotland) Act 1988 to raise proceedings for possession under grounds 10, 11, 12, 13 and 14 of schedule 5 of the Housing (Scotland) Act 1988. All three notices were served on the Respondent by recorded delivery post and signed for by the Respondent on 28 September 2017. The Applicant had provided the Tribunal with copies of the Short Assured Tenancy, Notice to Quit, the Section 33 Notice and the signed proof of delivery. She had also provided the Tribunal with a copy of the Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 served on Glasgow City Council on 1 December 2017.
8. The Applicant explained that she continued to send texts and emails to the Respondent about arrears of rent and reminding the Respondent that in terms of the notices served the Respondent had to vacate the property by 1 December 2017.
9. On 30 November 2017 the Respondent contacted the Applicant by text message saying she was unable to move out of the Property on 1 December 2017 and that the Applicant would have to obtain an Order to force the Respondent to move. The Respondent did not vacate the Property on 1 December 2017.
10. The Applicant made the application seeking recovery of possession of the Property under Rule 66 of the Regulations on 1 December 2017.

Findings in Fact

1. The Applicant is the heritable proprietor and landlord of the Property at 161 Foresthall Drive, Glasgow G21 4EL.
2. The Respondent is the tenant of the Property and continues to reside there having failed to vacate on 1 December 2017.

3. The Applicant let the Property to the Respondent under a Short Assured Tenancy dated 7 December 2016 and 3 January 2017 with a start date of 1 February 2017 until 1 August 2017. The tenancy continued on a monthly basis thereafter.
4. On 27 September 2017 by way of recorded delivery post the Applicant served a Notice to Quit terminating the tenancy on 1 December 2017 and Notice in terms of Section 33 of the Housing (Scotland) Act 1988 indicated that the Applicant intended to take possession of the Property on 1 December 2017. The Applicant also served a Form AT6 Notice in terms of Section 19 of the Housing (Scotland) Act 1988 informing the Respondent that she would raise proceedings for repossession on the 1 December 2017 if the property had not been vacated by then. The Respondent signed receipt of the aforesaid notices on 28 September 2017.
5. The contractual tenancy was brought to an end on 1 December 2017.

Reasons for Decision

1. The Tribunal considered the issues set out in the application and noted that despite the Respondent being given notice of the Case Management Discussion, the Respondent had not lodged any written representations to dispute the application and was not present or represented at the Case Management Discussion. The Tribunal proceeded to hear and determine the application in the absence of the Respondent on being satisfied that the requirements of Rule 24(1) of the Regulations regarding the giving of notice of a hearing to the Respondent had been complied with.
2. The Tribunal concluded that the applicant was entitled to seek repossession of the property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy between the parties. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met which would entitle the Applicant to repossess the Property namely that-
 - i. the Short Assured Tenancy had reached its end (termination date) on 1 December 2017;
 - ii. the tenancy was not continuing on a monthly basis after 1 December 2017, the Notice to Quit having been validly served on 27 September 2017 which brought the contractual Short Assured Tenancy to an end on 1 December 2017;

- iii. no further contractual tenancy was in existence; and
- iv. that the Applicant had given the Respondent at least 2 months' notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that she required possession of the property on 1 December 2017.

3. In terms of Section 33(1) of the Housing (Scotland) Act 1988 the Tribunal shall make an order for possession where it is satisfied that the statutory terms of Section 33 of the Housing (Scotland) Act 1988 have been met. Accordingly, the Tribunal found that the Applicant was entitled to an order for possession of the Property and accordingly granted the order sought.
4. This is an application under Rule 66 and the Tribunal confined itself to a determination based on this ground, being an application under section 33 of the Housing (Scotland) Act 1988. As narrated above, the Tribunal considered that this ground for recovery of possession under Section 33 has been met.

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 Evans

Shirley Evans
Legal Member/Chair

6 February 2018

