



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 18 and 33 of the Housing (Scotland) Act 1988 (“the Act”)

Chamber Ref: FTS/HPC/EV/18/2181

Re: Property at 11 Lylesland Court, Paisley, PA2 6RR (“the Property”)

Parties:

Mr Ross Meechan, 12 Greenlaw Drive, Paisley, PA1 3RU (“the Applicant”)

Mr Paul McFadyen, 11 Lylesland Court, Paisley, PA2 6RR (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member)

Decision (in absence of the Respondent)

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

- **Background**

By application received on 20 August 2018, the applicant sought an order under section 33 of the Housing (Scotland) Act 1988 and in terms of rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

On 3 October 2018, the application was accepted by the Tribunal and referred for determination by the tribunal.

A Case Management Discussion was set to take place on 22 November 2018 and appropriate intimation of that hearing was given to both the landlord and the tenant

- **The Case Management Discussion**

The Case Management Discussion (CMD) took place on 22 November 2018. The applicant was not in attendance personally but was represented by his brother, Stephen Meechan attended. The respondent did not attend

The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters. The tribunal asked various questions with regard to the application

The tribunal noted that the parties had entered into a tenancy agreement relating to the property several years ago. The rent was £425 per month. No rent had been paid since March 2018. Rent arrears were currently £3400.

The tribunal noted that the applicant had not produced a copy of the tenancy agreement between the parties. The representative explained that the tenancy agreement had been prepared by a letting agent who had now ceased trading and no copy of the agreement had been provided to the landlord.

The tribunal explained to the representative the importance of the tenancy agreement in allowing the tribunal to ascertain whether the various powers open to the tribunal in terms of orders for possession under both sections 18 and 33 of the Act could be used

Without sight of the tenancy agreement it was impossible for the tribunal to determine whether the Notice to Quit which had been served on the tenant was valid and effective. Similarly, without sight of the tenancy agreement it was impossible for the tribunal to determine whether the procedure under section 18 could be utilised by the applicant to obtain an order for possession standing the terms of section 18(6) of the Act. The tribunal noted that the Form AT6 was dated 10 July 2018 and bore to be effective from 24 July 2018. The representative indicated that this notice had been served using recorded delivery post. On that basis, the tribunal queried whether the tenant could have received the required minimum period of fourteen days' notice and expressed concerns that the Form AT6 was thus invalid.

With regard to the notice served on the tenant in terms of section 33 of the Act, the tribunal noted this was dated 6 March 2018 and bore to be effective from 2 May 2018. In terms of section 33(20) of the Act, the period of notice which must be given in this notice must be at least two months. The period given in the notice fell short of the required period by at least four days

The tribunal asked the representative whether he wished further time to seek to obtain a copy of the tenancy agreement and to have the tribunal fix a further hearing or whether he wished to have the application refused based on the concerns raised by the tribunal with regard to the validity of the various notices. The representative indicated that he would prefer that the application was refused and the landlord could then reconsider how to proceed in this matter

The tribunal accordingly indicated that it would proceed to issue a decision refusing the application.

- **Reasons for Decision**

Section 18 of the Act allows the tribunal to grant an order for possession where appropriate notice in Form AT6 has been served on a tenant and where a landlord is entitled to an order based on one or more of the grounds for possession set out in schedule 5 of the Act.

The tribunal were not satisfied that notice in terms of section 18 had been properly served upon the tenant. The copy notice provided could not have given the tenant the required minimum period of notice given the admission by the representative that service of the notice had been effected using recorded delivery post. No proof of that method of service was produced

Section 33 of the Act states that the tribunal must grant an order for possession of a short assured tenancy where the short assured tenancy has reached its ish, that tacit relocation is not operating, where no new contractual tenancy has been agreed between landlord and tenant and where the landlord has given notice to the tenant in the manner required by section33 (1) (d)

The tribunal were not satisfied that all of these requirements had been met by the service of the relevant notices and from the evidence given by the landlord

- **Decision**

The tribunal refuses the application for the order for possession and dismisses the application

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.

Jim Bauld

Legal Member/Chair

22 November 2018
Date