



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33(1) of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/19/0541**

**Re: Property at 51 Lulworth Court, Dundee, DD4 0LS (“the Property”)**

**Parties:**

**Mr George Kwek, Heatherbank, Auchmuir Bridge, Leslie, Fife, KY6 3JD (“the Applicant”)**

**Mr Paul Hendrie, 51 Lulworth Court, Dundee, DD4 0LS (“the Respondent”)**

**Tribunal Members:**

**Ewan Miller (Legal Member)**

**Decision (in absence of the Respondent)**

**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**

**Background**

The Applicant was the owner of the Property. He had entered in to a lease of the Property to the Respondent on 7 September 2016 at a monthly rental of £340 pcm. Due to rent arrears arising the Applicant had sought to terminate the lease and regain possession of the Property. The Applicant alleged that the Respondent had failed to remove from the Property. The Applicant therefore made an application to the Tribunal seeking an order for possession.

The Tribunal had before it the following documentation:-

- The Applicant’s application to the Tribunal dated 15 February 2019;
- A copy of the lease between the parties;
- A copy of the s33 notice and Notice to Quit along with associated execution of service by Sheriff Officer
- S11 Homelessness Notice

- A copy of the Applicant's title to the Property;
- Copies of the Tribunal Papers served on the Respondent dated 21 May 2019.

### **Case Management Discussion ("CMD")**

The Tribunal held a CMD at Caledonian House, Greenmarket, Dundee at 10am on 25 June 2019. The Applicant was not present but was represented by Ms Davidson of McKenzies, Solicitors, Kirkcaldy. The Respondent was neither present nor represented.

The Tribunal noted that the paperwork regarding the CMD had been served timeously on the Respondent. The paperwork highlighted the time and place of the CMD and also the fact that a decision could be made in the absence of the Respondent. The CMD had already been postponed once at the request of the Respondent. On the basis the Tribunal had already extended some leeway to the Respondent previously, the Tribunal saw no reason not to simply proceed and make a decision at the CMD.

### **Findings in Fact**

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property;
- The Applicant had let the Property to the Respondent on 7 September 2016;
- The Applicant had validly and timeously served notice on the Respondent to bring the tenancy to an end on 7 November 2018;
- The Respondent had failed to remove and the Applicant was therefore entitled to an order for possession

### **Reasons for Decision**

The Tribunal had before it the lease of the Property. This confirmed that the initial period of the lease had expired and that it was continuing on tacit relocation. The lease specified that at least two months' notice had to be given to bring the lease to an end in line with the monthly rental payment date (the 7<sup>th</sup> of the month in this case). The Tribunal noted that the Applicant's agent had served the appropriate s33 Notice and Notice to Quit on the Respondent. This had been done by Sheriff Officer on 3 September more than two months in advance of the date terminating the tenancy of 7 November. Accordingly, the notices had been validly and timeously served. The Respondent had failed to remove and, in these circumstances, the Applicant was entitled to an order for possession. The Tribunal had no reason to doubt the paperwork produced by the Applicant or his agent. There was nothing from the Respondent to contradict or dispute this. Accordingly, the Tribunal was content to grant the order for possession sought by the Applicant.

## 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

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**Legal Member/Chair**

25/6/19  

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**Date**