



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 32 of the Housing (Scotland) 1988

Chamber Ref: FTS/HPC/EV/18/1051

Re: Property at 70 Buttars Loan, Dundee, DD2 4PG (“the Property”)

Parties:

Mr Steve Wilkie, Mrs Mary Wilkie, Skyview, Eassie, DD8 1ST (“the Applicant”)

Mr Charles Symons, 70 Buttars Loan, Dundee, DD2 4PG (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member)

Decision

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

Background

1. The Application for recovery of Possession of the Property was made on 2 May 2018.
2. The Application is made under Rule 66 –Possession on Termination of a Short Assured Tenancy.
3. On 15 August 2018 both Parties were written to intimating the time, date and venue of the Case Management Discussion (CMD).Written representations were required to be made by the Respondent by 10 September 2018.None were lodged.
4. The Respondent received intimation of the CMD and was issued with the bundle of papers in support of the Application along with Guidance Notes by Sheriff Officer Service on 16 August 2018.
5. An application to postpone the CMD was submitted by the Respondent's father by e mail on 7 September 2018.It indicated that the Respondent may not be able to attend the CMD due to ill health indicating that the Respondent suffered from mental health problems. A Soul and conscience Certificate was being sought when the doctor visited. This was never produced. The

Applicant opposed the postponement and indicated that the Respondent could be represented by his father. The Tribunal did not grant the postponement at that time, instead indicating that the Respondent could nominate a Representative to attend, could attend with a Supporter and could make a request for Accessibility Requirements. The Parties were advised of that on the morning of the CMD.

The Case Management Discussion

6. The CMD took place at Dundee Carers Centre, 132-134 Seagate, Dundee DD1 2HB on 10 September 2018 at 2pm.
7. The Applicant Mrs Wilkie was in attendance representing herself and her husband.
8. The Respondent was represented by his father James Symons. It was clear that no mandate in written format had been provided by the Respondent. Mrs Wilkie was prepared to agree to Mr James Symons appearing on behalf of his son as he had been involved from time to time over the tenancy to assist his son with his affairs. I agreed to allow him to represent his son today given his stated health issues but indicated the expected procedure for intimation on the Tribunal forthwith.
9. The Paperwork lodged in support of the Application was discussed in detail.
10. The current tenancy between the Parties commenced on 1 March 2017 in the sole name of the Respondent as tenant. It was signed by him on 1 March 2017. It was signed by the landlord on 11 April 2017.
11. A document headed, AT5 under section 32 of the Housing (Scotland) Act 1988 ("the Act"), was produced along with a declaration of receipt signed by the Respondent. Both were dated 11 April 2017. The Applicant confirmed the dates noted on all documents were correct.
12. The Respondent's father indicated at the outset that he could give an undertaking to the Applicant that the Respondent would vacate the Property voluntarily within 14-21 days from today to resolve the matter. He would give formal intimation and considered that this would be best for his son as well as the Applicant.
13. I explained to the Parties present the requirements of section 32 of the Act and that the Notice referred to in section 32(2) must be served before the creation of the Assured Tenancy to make it a Short Assured Tenancy. It had not been.
14. A Notice to Quit in the valid format was served at the instance of the Applicant on the Respondent by Sheriff Officer Service on 15 February 2018, requiring him to leave by 1 May 2018.
15. A Section 33 Notice under the Act had also been served by Sheriff Officer on the same date.
16. The Applicant was afforded the opportunity to produce any other documentation including an AT6, if she had served one. She had no other supporting documents to produce to the Tribunal to allow the Application to proceed. I would have continued the Application if there was a chance that such documents could have been produced. The Applicant was content to allow me to make a decision today based on what was available.

Findings in Fact

- I. The Parties entered into a Contractual Assured Tenancy which commenced on 1 March 2017.
- II. The tenancy became a Statutory Assured Tenancy from 1 May 2018.
- III. The Applicant is not entitled to repossession under section 33 of the Act, the tenancy not being a Short Assured Tenancy.

Findings in Fact and Law

- IV. The Application dated 2 May 2018 for recovery of Possession is refused.

Reasons for Decision

17. The Application should have been made under Rule 65- Assured Tenancy Possession commencing with service of a section 19 Notice under the Act.

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.

Susan Christie

Legal Member/Chair

10 September 2018
Date