

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988 (“the Act”)

Chamber Ref: FTS/HPC/EV/18/1467

Re: Property at 37 Ivy Leaf Place, Lennoxton, G66 7GJ (“the Property”)

Parties:

Ms Shirley Campbell, Parkhall, The Parklands, Carlton Colville, Suffolk, NR33 8RN (“the Applicant”)

Mr David Tannahill, Mrs Stacey Tannahill, 37 Ivy Leaf Place, Lennoxton, G66 7GJ; 9 Cruachan Road, Bearsden, G61 4LA (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. By application received on 13 June 2018, the Applicant sought an order under Section 33 of the Housing (Scotland) Act 1988 for possession of the Property on termination of a Short Assured Tenancy. The application was made in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. On 20 August 2018, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance in respect of the application in terms of Rule 9 of the Regulations.
3. A Case Management Discussion (“CMD”) was fixed for 1 October 2018 and intimation of same given to the parties. Notification of the date and time of the CMD, together with a copy of the application and supporting documentation was served on both Respondents by Sheriff Officer on 7 September 2018. No

written representations were received from or on behalf of the Respondent, Mr David Tannahill. A letter was received on behalf of the Respondent, Mrs Stacey Tannahill, advising that she had left the Property in November 2017 and would not be attending the CMD.

Case Management Discussion

4. The CMD took place on 1 October 2018 before the Legal Member ("the Tribunal"). The Applicant was represented by Mr Gerard McNulty, Director of R & G Estate Agents Limited ("the Applicant's agent). Mr Jim Maxwell, also of R & G Estate Agents Limited was also present. Neither Respondent attended.
5. The Tribunal explained the purpose of the CMD and the power of the Tribunal to determine the application at the CMD, if appropriate. The Tribunal referred to the documentation submitted in support of the application and, in particular, to the previous correspondence between the Tribunal and the Applicant's agent in relation to the Notice to Quit and Section 33 Notice served on behalf of the Applicant prior to making the application to the Tribunal. The Tribunal also asked the Applicant's agent questions in relation to the application.
6. The Applicant's agent explained that they had been under a misapprehension regarding the service of the Notice to Quit and had thought that service by their employee(s) putting it through the letterbox of the Property was sufficient. The Tribunal explained the legal position with regard to the requirements of service of the Notice to Quit and the Section 33 Notice. It was conceded by the Applicant's agent that the Notice to Quit had not been served in the mode required and that they would not be in a position to produce any evidence to the contrary. The Applicant's agent explained that the Applicant was keen to recover the Property as soon as possible, given that there are allegations concerning the conduct of the Respondent, Mr David Tannahill, which appear to be backed by the fact that the other Respondent, Mrs Stacey Tannahill, has required to leave the Property. He stated that the Applicant is not at fault here and is incurring financial loss in the circumstances. He does not know whether the Respondent, Mr David Tannahill, is still in occupation of the Property. The Tribunal explained that these factors do not have a bearing in respect of this type of application and that defects in the formal notices cannot be overcome by such factors.
7. The Tribunal advised that, in the circumstances, the application fell to be dismissed.

Findings in Fact

8. The Applicant is the joint owner and landlord of the Property. She had authority from the joint owner and landlord, Mr James Campbell, to act on his behalf in respect of the Property and in respect of this application.
9. The Respondents are the joint tenants of the Property.

10. The Property is let to the Respondents by virtue of a Short Assured Tenancy which commenced on 6 December 2016. The initial term of the lease was 6 months, until 6 June 2017 and thereafter continued by tacit relocation for further periods of 6 months.
11. The Applicant purported to end the contractual tenancy on 6 June 2018, which was an ish date in terms of the lease.
12. The Applicant's agent served a Notice to Quit and Section 33 Notice on the Respondents, both dated 6 April 2018. No evidence was provided of the date of service of either. The notices were both addressed to the joint Respondents. The Respondent, Mrs Stacey Tannahill was no longer residing at the Property. No evidence was provided that service of the notices was made to her at her forwarding address. The method of service of the notices was by an employee(s) of the Applicant's agent depositing same through the letterbox of the Property.

Reasons for Decision

13. Having regard to the overriding objective that proceedings must be dealt with justly, the Tribunal determined that, in the circumstances of this case and having regard to Rules 17 and 18 of the Regulations, this case could be determined at the CMD and did not require to be continued to a Hearing.
14. Section 33 of the Act states that an order for possession shall be granted by the Tribunal if satisfied that (a) the short assured tenancy has reached its ish; (b) that tacit relocation is not operating; (c) that no further contractual tenancy is in existence and (d) that the landlord has given to the tenant notice stating that he requires possession of the house.
15. Having regard to the authorities on the point, the Tribunal was not satisfied that the Notice to Quit had been correctly served as it had not been served by Sheriff Officer or by Recorded Delivery/"Signed For" mail. This was conceded by the Applicant's agent. Accordingly, the Tribunal determined that the contractual tenancy had not been validly terminated at the ish date. Therefore tacit relocation was operating and the requirements of Section 33 of the Act had not been met. The application to the Tribunal proceeded on the basis of an invalid Notice to Quit and should therefore be dismissed.

Decision

16. The application was dismissed.

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.

Nicola Weir

Legal Member/Chair

Date: 1 October 2018