

Housing and Property Chamber
First-tier Tribunal for Scotland



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 (“ the 1988 Act”)

Chamber Ref: FTS/HPC/EV/18/1744

Re: Property at 17 Park Street, Windhall, Airdrie, ML6 0ER (“the Property”)

Parties:

Mr Brian Caplan, c/o A Need to Sell, Dykebar House, 101 Barrhead Road, Paisley, PA2 7AD (“the Applicant”)

Mr Kevin Morrow, 17 Park Street, Windhall, Airdrie, ML6 0ER (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision (in the absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property should be granted in favour of the Applicant.

Background

1. An application was received on 11 July 2018 in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property (Procedure) Regulations 2017 (“the 2017 Regulations”). The Applicant seeks recovery of possession of the property in terms of section 33 of the Act.
2. The following documents were lodged with the application;- copy tenancy agreement, copy AT5 Notice, copy Notice to Quit and Section 33 Notice together with Sheriff Officer certificate of service and copy Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 together with a copy email intimating the notice to North Lanarkshire Council.
3. A copy of the application together with supporting documentation and a letter notifying the Respondent of the case management discussion (“CMD”)

assigned for 14th September 2018 at 10am were served on the Respondent by Sheriff Officer on 27 August 2018.

4. The case called before the Legal Member for a CMD on 14 September 2018 at 10am. The Applicant was represented by Miss Caldwell. There was no appearance by or on behalf of the Respondent. Following the CMD the Tribunal administration received a letter from the Respondent stating that he was unable to attend due to work commitments, that the CMD could proceed in his absence and that he did "deserve to be evicted"

Case Management Discussion

5. The Legal Member noted that the Respondent had been served with a copy of the Application and had been made aware of the CMD. No written representations had been received from him in advance of the CMD. Miss Caldwell advised that the Applicant has had no contact from the Respondent and confirmed that he is still in occupation of the property.
6. The Legal Member noted that the tenancy agreement lodged with the application relates to the Respondent and a joint tenant, Angela McGlone. Miss Caldwell confirmed that Ms McGlone has already vacated the property and the application only relates to the Respondent.
7. The Legal Member proceeded to consider the application and the supporting documentation.

Findings in Fact

8. The Applicant is the owner of the property.
9. By agreement dated 22 and 26 March 2018 the Applicant entered into a short assured tenancy agreement with the Respondent and Angela McGlone for an initial period of 6 months and monthly thereafter until terminated. An AT5 Notice in the correct format was issued prior to signature of the tenancy agreement and was signed by all parties.
10. The joint tenant, Angela McGlone has vacated the property.
11. A Notice to Quit containing the prescribed information and valid Section 33 Notice were served on the Respondent by Sheriff Officer on 23 April 2018. These notices stated that the Applicant required possession of the property on 27 June 2018.

Reasons for decision

12. Section 33 of the Act requires the Tribunal to grant an order for possession under a short assured tenancy where the tenancy has reached its end, tacit relocation is not operating, no further contractual tenancy is in existence and the landlord has given notice to the tenant that they require possession of the property.

- 13.** The Legal Member is satisfied that all of these requirements have been met by the Applicant.
- 14.** The Legal Member notes the terms of the letter received from the Respondent after the CMD but is satisfied that it would not have affected the outcome of the CMD had the letter been available to the Legal member at the CMD.
- 15.** The Legal Member is therefore satisfied that the requirements of Section 33 of the Act having been met, an order for recovery of possession should be granted in favour of the Applicant.

Decision

- 16.** The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the property.

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.

Josephine Bonnar

Josephine Bonnar, Legal Member/Chair

14 September 2018