

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

Chamber Ref: FTS/HPC/EV/18/3333

Re: Property at Flat G/R 58 Provost Road, Dundee, DD3 8AH (“the Property”)

Parties:

Mr Mark Sinclair, 1/2 23 Baxter Park Terrace, Dundee, DD4 6NR (“the Applicant”)

Mr Ewan Walsh, Ms Mallaika Hussain, Flat G/R 58 Provost Road, Dundee, DD3 8AH (“the Respondents”)

Tribunal Members:

Ewan Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant should be granted an Order of Possession for recovery of the Property

Background

The Applicant was the owner of the Property and had let it to the Respondents. The Applicant alleged that the lease had reached its term and sought recovery of possession in terms of s33 of the Housing (Scotland) Act 1988. The Applicant alleged that the Respondents had failed to remove and accordingly applied to the Tribunal on 11 December 2018 seeking recovery of possession.

The Tribunal noted that the Respondents had been advised of the Case Management Discussion (“CMD”) by letter dated 27 February 2019 and that the letter had been correctly and timeously served by Sheriff Officers. The letter confirmed the date, place and time of the CMD and advised that the Tribunal could make a final decision at the CMD in their absence

CMD

The Tribunal held a CMD at Caledonian House, Greenmarket, Dundee at 10am on 19 March 2019. The Applicant was not present but was represented by Ms Avril Morrison and Mr Trevor White of Rent Locally Tayside and Fife, his letting agents. The Respondents were not present or represented and no submissions had been made by them in response to the Tribunal papers. As noted above, the Tribunal was satisfied that the CMD had been correctly and timeously notified to the Respondents. The Tribunal was satisfied that it was appropriate to proceed with the CMD and to make a decision.

One preliminary matter arose in that the Tribunal noted that the application had been made under Rule 65 (Termination on Mandatory or Discretionary Grounds) as opposed to Rule 66 (Possession on Termination of Tenancy) on the application form to the Tribunal. The Tribunal noted that the documentation required under Rule 66 had all been correctly and timeously served on the Applicant and it had been made clear to the Respondents that the tenancy was being terminated at ish. On that basis, the Tribunal, taking in to account the overriding objective of fairness, was content to accept the Applicant's representatives motion to amend the application to be under Rule 66. The Tribunal was satisfied that this had been a minor administrative error.

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 Respondents on a Short Assured Tenancy dated 31 July 2017;
- The tenancy end date was 31 January 2018. In terms of the lease it had thereafter been continuing on a month to month basis;
- In terms of Clause 22 of the lease, the Applicant required to give two months notice to terminate the lease;
- The appropriate s33 notice and Notice to Quit had been timeously served by Sheriff Officers on the Respondents on 29th August 2018 with an ish date of 31 October 2018;
- The Respondents had failed to remove;
- The appropriate s11 homelessness notice had been served.

Reasons for Decision

The Tribunal was readily satisfied that it was required to grant the Order for Possession. The Applicant had given the correct notice bringing the lease to an end. The notices had been properly served by Sheriff Officers. The lease had, therefore, been brought to a contractual end on 31 October 2018. There was no evidence that any tacit relocation was still occurring or that a new contractual tenancy had been entered in to. The Respondents had failed to remove. The Respondents had given no information to justify their staying in the Property. The Tribunal had no reason to question the submissions of the Applicant. The Respondents were in breach and accordingly the Tribunal was obliged to grant the order in terms of s33 of the Housing (Scotland) Act 1988.

Decision

The Tribunal determined that the Applicant should be granted an Order of Possession for recovery 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.

E Miller

Legal Member/Chair

Date 19/3/19