



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 Act”)

Chamber Ref: FTS/HPC/EV/20/0243

Re: Property at 98E Kemnay Gardens, Dundee, DD4 7TN (“the Property”)

Parties:

Mr Graeme Ogg, 15 Wood Lane, Monifieth, Dundee, DD5 4HS (“the Applicant”)

Miss Cecilia McPhee, 98E Kemnay Gardens, Dundee, DD4 7TN (“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 that an order for possession of the Property be granted in favour of the Applicant.

Background

The Applicant was the owner of the Property. The Applicant had let the Property to the Respondent under a Short Assured Tenancy dated 20 October 2017. The lease was for an original period of 6 months and 2 days (terminating 21 April 2018). It had been tacitly relocating on a monthly basis thereafter under Clause 1.1 of the lease. The Applicant had sought to bring the tenancy to an end by giving the requisite notice under the terms of the lease/the Act.

The Applicant applied to the Tribunal seeking an order for possession based on the termination of the tenancy.

The Tribunal had before it the following documentation:-

- The Applicant’s Application to the Tribunal dated 21 January 2020;
- Copy Short Assured Tenancy dated 20 October 2017;

- Form AT5 dated 20 October 2017;
- Notice to Quit to the Respondent dated 22 October 2019;
- S33 Notice dated 22 October 2019;
- Copy Sheriff Officers Certificate of Service dated 28 October 2019;
- S11 Homelessness Notice to Dundee City Council;
- Copy Land Certificate ANG11135 evidencing the Applicant's ownership of the Property;
- Notification dated 23 June 2020 of the CMD to the parties.

Case Management Discussion ("CMD")

The Tribunal held a CMD by teleconference on 13 July 2020 before Mr Ewan Miller, Legal Member of the Tribunal. The Applicant was not present on the call but was represented by his letting agent, Mr Struan Baptie. The Respondent was neither present nor represented on the call.

The Tribunal noted that this matter had originally been set down for a CMD on 30 March, but had been postponed because of the lockdown measures caused by the Covid-19 pandemic. The original CMD had been notified to the Respondent but there had been no response or submissions from her. The Respondent had also been notified of the new CMD date of 13 July 2020. Again no response had been received from her. The documentation sent to her had advised that a decision could be made at a CMD and in her absence. The Tribunal considered that given notification of both the CMD had been given and the fact that a decision could be made in her absence, there was no reason not to proceed and determine the matter if appropriate.

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 under a Short Assured Tenancy dated 20 October 2017;
- The initial term had expired on 21 April 2018 and was continuing on a month to month basis thereafter subject to two months notice being given to bring the lease to an end by either party (Clause 1.1 of the lease);
- The Applicant had validly served a S33 Notice and Notice to Quit and otherwise complied with all statutory requirements to terminate the tenancy;
- The lease had terminated on 21 January 2020;
- The lease had been validly terminated and the Applicant was entitled to an order for possession.

Reasons for Decision

The Tribunal based its decision primarily on the paper evidence before it. The Tribunal had had sight of the lease and AT5 and was satisfied that the lease had been properly constituted under the Act as a Short Assured Tenancy. Accordingly the Applicant was entitled to recover possession at the ish date of the lease. The lease was continuing month to month and could be brought to an end by either party on two months notice.

The Applicant had given almost 3 months notice. The Applicant had validly served a s33 notice and a Notice to Quit to the Applicant and served the s11 Homelessness Notice on the relevant Local Authority. The Tribunal was satisfied that the Applicant was entitled to possession of the Property and that the Tribunal was obliged to grant the order if the Respondent had failed to remove.

The Tribunal enquired as to confirmation as to whether the Respondent had removed. The Applicant's representative advised that it was unclear as to the exact position as to the extent of her current occupation. They had received anecdotal evidence from neighbours and others that the Property had been used by the Respondent as a brothel. The Tribunal was satisfied that if it was not clear whether the Property had been abandoned or if the Respondent had properly removed. It was therefore still appropriate to issue the order for possession to put the right of the Applicant to gain possession beyond doubt.

The Tribunal noted that the Notice to Quit and s33 Notice had been served prior to 7 April 2020 and so were not impacted by the provisions of the Coronavirus (Scotland) Act 2020.

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.

Ewan Miller

13 July 2020

Legal Member/Chair

Date