

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/18/0387

Re: Property at 17E Kilcreggan View, Greenock, PA15 3JA (“the Property”)

Parties:

Mr Stephen Schapira, 32/2 Divrei Chaim Street, Jerusalem, Israel (“the Applicant”)

Ms Bernadette Dykes, 42 Grosvenor Road, Greenock PA15 2 DR (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application in terms of the Housing (Scotland) Act 1998 for a possession order.

Case Management Discussion

The Applicant’s representative Miss Cargill Solicitor attended the Case Management Discussion on behalf of the applicant. The Respondent did not attend but had been personally served with the application and relevant papers together with a note of the date of the Case Management Discussion. The Applicant’s Representative sought to proceed in the absence of the Respondent and this was permitted in terms of Rule 29 of the Tribunal Rules.

The Tribunal was aware that the Respondent had appeared to have vacated the property as Sheriff Officers serving the Tribunal papers on 26th April 2018 had

found it empty and served all papers on the Respondent personally at 42 Grosvenor Road, Greenock, PA15 2DR. The Applicant's Representative was not aware of this and advised that the Applicant's property agents had not received keys and had understood that the Respondent was still residing at the property.

The Applicant's Representative sought to proceed with the Application for the possession order under Rule 66. Certain papers had been served which suggested that the possession order was sought under Rule 65 but the Applicant's representative was able to confirm that the order was being sought in terms of S33 of the Housing (Scotland) Act 1988.

The Tribunal had before it the tenancy agreement, a Notice to Quit, a notice under S33 of the 1988 Act, a Form AT5 and a copy notice to the local authority in terms of the Homelessness etc (Scotland) Act 2003.

Findings in Fact

The Notice to Quit and notice under S33 of the 1988 Act were in proper form and required the Respondent to vacate the property by 6 January 2018. Form AT5 had been served at the start of the tenancy and this appeared to be a short assured tenancy under the 1988 Act. The tenancy agreement had ended on 6th October 2017 and continued on a month to month basis thereafter. The requirement to vacate by 6th January 2018 conformed to the tenancy agreement and the Tribunal was satisfied that the tenancy had reached its end and that tacit relocation was no longer in operation. The tenancy agreement required that 2 months' written notice be given of termination. On consideration of the documents which appeared to be sent by recorded delivery or "track and trace" it was clear that these had been served on 9th November 2017. This meant the period of less than 2 months' written notice of the requirement for possession had been given to the Respondent.

Decision

The Application for a possession order was dismissed by the Tribunal.

Statement of Reasons

The Applicant had not complied with the terms of S33(2) of the Housing (Scotland) Act 1988 in respect of the notice period required for a possession order and an order under this section could not be made.

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.

Valerie Bremner

Legal Member/Chair

30 May 2018.

Date