



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/22/2984

Re: Property at 7 Graham Street, Holytown, ML1 4QX (“the Property”)

Parties:

McBride Properties, PO Box 26491, Glasgow, G74 9DA (“the Applicant”)

Miss Laura Ferguson, 7 Graham Street, Holytown, ML1 4QX (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the Property be made.

Background

- 1. This was a case management discussion held by teleconferencing on 6th December 2022 to consider the application made by the Applicants dated 22nd August 2022 for an order of possession of the Property in terms of Rule 66 of the Tribunal Rules.**

Case management discussion

- 2. The Applicant was represented by Mr Anthony McBride and Miss Anastasia McBride. The Respondent was present.**

Preliminary Matters

- 3. It was noted that the Notice to Quit and notice required under section 33 of the 1988 (“Section 33 Notice”) had been served on the Respondent on 3rd February 2022 and that these demonstrated that the Applicants had required the Respondent to remove herself by 8th August 2022.**
- 4. Miss McBride stated that the application to the Tribunal had been required**

because the Respondent had not removed herself by 8th August 2022 and was still residing in the Property.

5. The Respondent said that, on 8th August 2022, she had nowhere to go to and that her application to the local authority for housing had been terminated when it received a reference from her current landlord which disclosed that she was in arrears with her rent.
6. The Respondent said that she now has a tenancy with a Housing Association which commenced on 1st December 2022 and that she needed a period of two weeks to move out of the Property.
7. Parties were agreed that there was no requirement for a Hearing to be held.

Findings in Fact

1. The Applicant and the Respondent are parties to a short assured tenancy agreement in respect of the Property dated 8th September 2016.
2. The term of the tenancy was 8th September 2016 to 8th March 2017 (both dates inclusive).
3. The tenancy agreement provided for the tenancy to continue on a month to month basis if it was not brought to an end on 8th March 2017.
4. The Applicant served a Section 33 Notice on the Respondent on 3rd February 2022 requiring vacation of the Property by 10th February 2021.
5. The Respondent remains in occupation of the Property.
6. The required notice in terms of the Homelessness etc. (Scotland) Act 2003 has been given to the local authority.

Findings in Fact and Law

1. The tenancy continued by tacit relocation from 8th March 2017 until it was brought to an end by service of the Notice to Quit which was served on 3rd February 2022.
2. The tenancy ended on 8th August 2022.
3. The Applicant is entitled to recover the Property because the tenancy has been brought to an end.
4. It is reasonable for the order of eviction to be granted.

Documents

8. The Tribunal considered the documents which had been lodged with the application:

(a) Copy of the short assured tenancy agreement dated 8th September 2016.

(b) AT5 Form relating to the short assured tenancy.

(c) Notice to Quit dated 14th January 2022 requiring the Respondent to leave the Property by 8th August 2022.

(d) Section 33 Notice.

(e) Sheriff Officer's certificate of citation in respect of service of the Notice to Quit and Section 33 Notice.

(f) Copy of Notice to local authority under Section 11 of the Homelessness etc (Scotland) Act 2003.

Discussion and Determination

9. The Law

Section 33 of the Housing (Scotland) Act 1988 as amended by The Coronavirus (Scotland) Act 2020

Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its finish;

(b) that tacit relocation is not operating; and

(c)

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and

(e) that it is reasonable to make an order for possession.

(2) The period of notice to be given under subsection (1) (d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;

(ii) in any other case, six months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

10. The Tribunal considered the documents which sought to bring the tenancy to an end. It found the notice to quit and Section 33 Notice to be in order and that they had been properly served on the Respondent who had raised no issue about them.

11. The Tribunal noted that the period of notice in the notice to quit was in excess of six months which was appropriate in terms of the statutory provisions and that the application to the Tribunal had not been made prior to the expiry of the notice period.

12. The Tribunal noted that the appropriate notice had been given to the local authority in terms of the Homelessness etc. (Scotland) Act 2003

13. The Tribunal required to consider whether or not it is reasonable to grant an order for possession of the Property. It had no difficulty in determining that it is reasonable. The Respondent did not contest the application and has a new tenancy with a housing association.

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.

Martin McAllister

**Martin J. McAllister
Legal Member
6th December 2022**