



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/19/0019

Re: Property at 11 Hugh Mackenzie Avenue, Alness, IV17 0WQ (“the Property”)

Parties:

Highland Residential, 68 MacLennan Crescent, Inverness, IV3 8DN (“the Applicant”)

Irene Robertson, residing at 11 Hugh Mackenzie Avenue, Alness, IV17 0WQ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession of the property against the Respondents.

Background

1 By application dated 3rd January 2019 the Applicant sought an order for recovery of possession of the property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicant submitted the following documents:-

- 1 Short Assured Tenancy between the Applicant and Respondent dated 1st July 2016;
- 2 Copy AT5 served upon the Respondent dated 1st July 2016;
- 3 Copy Notice to Quit dated 9th October 2018;

- 4 Copy Notice under Section 33(1)(d) of the Housing (Scotland) Act 1988 dated 9th October 2018;
 - 5 Copy AT6 dated 9th October 2018;
 - 6 Notice under section 11 of the Homelessness etc (Scotland) Act 2003; to Highland Council; and
 - 7 Rent Statement from 1st April 2017 to 1st January 2019.
- 2 Following submission of the application a Case Management Discussion was assigned for 19th March 2019. Copies of the application together with notification of the Case Management discussion were subsequently served upon the Respondent by Sheriff Officers on 27th February 2019.

The Case Management Discussion

- 3 The Case Management Discussion took place on 13th March 2019 at the Spectrum Centre, Margaret Street, Inverness. The Applicant was represented by Angus Brown, Harper McLeod Solicitors. Mr Brown was accompanied by Duncan Black and Julie Lindsay, both employees of the Applicant. The Respondent did not attend.
- 4 Mr Brown advised that the Applicant sought recovery of possession under section 33 of the Housing (Scotland) Act 1988. A valid Notice to Quit terminating the tenancy as at the ish date together with notice under section 33(1)(d) of the Act had been served on the Respondent. The provisions of section 33 had therefore been met. The Tribunal was obliged to grant repossession.
- 5 In response to questions from the Tribunal, Mr Brown clarified that the Applicant was not seeking recovery of possession under section 18 of the 1988 Act, albeit there were rent arrears outstanding. He advised that an order for payment of the arrears had been granted under a separate application to the Tribunal on 29th October 2018. The Respondent had been in touch with the Applicant's office in recent weeks to advise that she had obtained a tenancy with the local authority and was hoping to move in the next fortnight. However the Applicant sought the order for repossession in order to protect its position. Mr Brown confirmed that the property was owned by Albyn Housing Society Ltd (AHS). The Applicant was a subsidiary of AHS and leased the property for rental accommodation.

Findings in Fact

- 6 The Property is owned by Albyn Housing Society Ltd ("AHS"). The Applicant is a wholly owned subsidiary company of AHS. The Property is leased from AHS by the Applicant for the purpose of providing mid-market rental accommodation.

- 7 The Applicant and the Respondent entered into a Tenancy Agreement dated 1st July 2016 in respect of the Property, the term of which was 1st July 2016 to 2nd January 2017 and monthly thereafter.
- 8 The tenancy was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 9 On 9th October 2018 the Respondent was served with a Notice to Quit terminating the tenancy as at 2nd January 2019 and Notice intimating that the Landlord required possession of the house. Both Notices were served by Recorded Delivery Mail.
- 10 The tenancy has reached its end as at 2nd January 2019. Tacit relocation is not operating. There is no further contractual tenancy in existence.

Reasons for Decision

- 11 In this case the Applicant seeks an order for repossession of a short assured tenancy under section 33 of the Housing (Scotland) Act 1988
- 12 Section 33(1) of the Housing (Scotland) Act 1988 provides as follows:-

“(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 shall 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;*
 - (c) *.....and*
 - (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.”*
- 13 The Tribunal was satisfied that a valid Notice to Quit had been properly served on the Applicant which terminated the contractual tenancy between the parties as at 2nd January 2019. Accordingly tacit relocation was not operating. The Respondent had also been given notice that the Applicant required possession of the Property.
- 14 It was therefore clear from the documentation before the Tribunal that the provisions of section 33 had been met. The Respondent had not sought to dispute the terms of the application, which appeared to align with the position put forward by the Applicant regarding her having obtained a tenancy with the

local authority. Accordingly there being no dispute regarding the relevant facts of the case, the Tribunal considered that it was able to make sufficient findings to determine the case without a hearing and that to do so would not be prejudicial to the interests of the parties.

- 15 The Tribunal therefore determined to make an order for repossession under section 33 of the Housing (Scotland) Act 1988.

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.

Ruth O'Hare

19 March 2019

✓

Legal Member/Chair

Date