

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/19/2414

Re: 14 Moffat Road, Ormiston, East Lothian EH35 5JY ("Property")

Parties:

Fawns Park Property Company, Fawns Park, Ormiston EH35 5HS ("Applicant")

TC Young, Solicitors, 7 West George Street, Glasgow G2 1BA ("Applicant's Representative")

Suzanne Webster, 14 Moffat Road, Ormiston, East Lothian EH35 5JY ("Respondent")

Tribunal Members:

Joan Devine (Legal Member)

Decision

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

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Short Assured Tenancy Agreement signed by the Applicant and the Respondent dated 25 August 2017; Notice signed by the Applicant and the Respondent under section 32 of the Housing (Scotland) Act 1988 ("1988 Act") dated 25 August 2017 ("AT5"); Notice to Quit and Notice in terms of Section 33 of the 1988 Act dated 22 May 2019 addressed to the Respondent; Sheriff Officer's execution of service evidencing service on the Respondent of the Notice to Quit and Section 33 Notice on 23 May 2019; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 1 August 2019 and certificate of service by Sheriff Officer evidencing service of a letter from the First-tier Tribunal enclosing a full set of papers on the Respondent on 20 August 2019.

Case Management Discussion

A hearing took place on 25 September 2019 at 2pm at Riverside House, 502 Gorgie Road, Edinburgh EH11 3AF. The Applicant was represented by Nicola Caldwell of the Applicant's Representative. The Respondent appeared personally. The Applicant's Representative sought an order for eviction. The Respondent told the Tribunal that she had taken advice from a housing officer who had told her that in the absence of an AT5, the tenancy had not been properly constituted as a short assured tenancy and therefore the notice to quit was invalid. The Respondent had been advised that she occupied the Property under an assured tenancy. The Respondent was directed to the copy tenancy agreement produced with the applications. She accepted that she had signed the tenancy agreement on 25 August 2017 and at the time noted thereon which was 19.30. The Respondent was referred to the copy AT5 lodged with the application. She accepted that it was her signature on the copy AT5 and that by signing the AT5 she acknowledged having received a copy of the AT5 prior to execution of the tenancy agreement. She accepted that the time noted on the AT5 was 19.18. The Respondent was asked whether she disputed receipt or validity of the Notice to Quit or Section 33 Notice. She said that she did not. The tribunal explained to the Respondent the mandatory nature of section 33 of the 1988 Act.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement dated 25 August 2017.
2. The Applicant and the Respondent had signed the form AT5 on 25 August 2017, prior to execution of the tenancy agreement.
3. The tenancy commenced on 24 August 2017 and was stated to be for the period ending 24 March 2018 and month to month thereafter.
4. A Notice to Quit and Notice in terms of Section 33 of the 1988 Act both dated 22 May 2019 was served on the Respondent on 23 May 2019 stating that the tenancy would terminate on 24 July 2019 and that possession of the Property was required on that date.

5. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act. The Tribunal noted that the tenancy had been properly created as a short assured tenancy. The Tribunal further noted that a Notice to Quit and Section 33 Notice had been served on the Respondent more than two months prior to the ish. In all of the circumstances, it was mandatory for an Order to be made in terms of section 33 of the 1988 Act.

Decision

The Tribunal grants an Order for possession 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.

Joan Devine

Legal Member

Date

25 September 2019