



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/19/4041

Re: Property at 17 Smith Street, Dalry, North Ayrshire, KA24 5BZ (“the Property”)

Parties:

Mrs Mandy Blythe, The Haayzie, Blair Road, Kilwinning, KA13 7QH (“the Applicant”)

Mr Matthew Walker, Mrs Megan Walker, 17 Smith Street, Dalry, North Ayrshire, KA24 5BZ; 17 Smith Street, Dalry, North Ayrshire, KA24 5BZ (“the Respondents”)

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused and that an order for possession should not be granted.

Background

1. An application was received on 19 December 2019 under rule 66 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of possession of the property under a short assured tenancy by the applicant against the respondents.
2. The application included: the tenancy agreement; copies of the form AT5 addressed to each respondent; a copy of the notice required under section 33 of the 1988 Act (‘the section 33 notice’) addressed to each respondent; copies of the Notice to Quit addressed to each respondent, together with proof of service by sheriff officer of the Notice to Quit and section 33 notice on each

respondent; and a copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003.

3. Notice of the case management discussion, together with the application papers and guidance notes, had been served on the respondents by sheriff officers on behalf of the tribunal on 13 January 2020.
4. No written representations were received from the respondents prior to the case management discussion.

The Case Management Discussion

5. A case management discussion (CMD) was held on 13 February 2020 at the Frank Sweeney Centre for Enterprise, 82-84 Glasgow Street, Ardrossan KA22 8EH. The applicant was not present or represented. One of the respondents, Mrs Megan Walker, was present and gave evidence on her own behalf. Her husband, Mr Matthew Walker was stuck in traffic and was unable to attend. Mrs Walker was accompanied by her mother-in-law, Mrs Karen Walker, as a supporter.
6. The tribunal delayed the start of the CMD by 15 minutes, in case the applicant had been detained. The applicant did not appear. The tribunal clerk called the tribunal administration to check whether any telephone calls, messages or emails had been received from the applicant, but none had been received.
7. The tribunal noted that there had been an error in the letters originally sent out to the parties regarding the venue for the CMD. Among the papers for the CMD initially sent out to the parties, the CMD notification letter in relation to the present application correctly stated that the CMD would be held in Ardrossan. The CMD Notification letter for the accompanying civil proceedings application (ref: HPC/CV/19/4043) issued on 9 January 2020 incorrectly stated, however, that the CMD would be held in Glasgow. When this error was discovered, the tribunal administration wrote to the parties on 30 January 2020, advising them of the correct venue for the CMD for both applications. This was again confirmed in a further letter to the parties dated 3 February 2020. These letters had been sent to the applicant's representative by email.
8. Given that the correct venue was stated for the CMD in the papers for the present application, and was further notified in the letters of 30 January and 3 February 2020 relating to the civil proceedings application, the tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal therefore proceeded with the CMD in the absence of the applicant.

Findings in Fact

9. The tribunal made the following findings in fact:

- The applicant is the owner of the property.
- There was a short assured tenancy in place between the applicant and the respondents. The initial tenancy commenced on 8 April 2017 and the tenancy agreement stated that the lease would endure until 9 October 2017, continuing on a month to month basis thereafter.
- The AT5 forms were in the prescribed format and had been signed by both the applicant's agent and the respondents on 4 April 2017.
- The tenancy agreement provided that the applicant could terminate the tenancy by written notice to quit, in accordance with the statutory provisions in force from time to time.
- Both the Notices to Quit and section 33 notices contained the prescribed information and both were dated 5 June 2019. These notices stated that the applicant required vacant possession of the property on or before 8 August 2019.
- The Notices to Quit and section 33 notices had been served on the respondents by sheriff officer on 7 June 2019, providing more than two months' notice of vacant possession.

Reasons for decision

10. Section 33 of the 1988 Act requires the tribunal to grant an order for possession under a short assured tenancy where: the tenancy has reached its ish; tacit relocation is not operating; no further contractual tenancy for the time being is in existence; and the landlord has given notice to the tenant that they require possession of the house. The tribunal is satisfied that these requirements have been met. The tribunal is therefore required to grant an order for possession under section 33 of the 1988 Act.
11. While there was evidence before the tribunal that the Notices to Quit and section 33 notices had been served on the respondents by sheriff officer, the tribunal was not satisfied that either of the sets of notices were validly constituted. The tribunal considers that as the initial tenancy ended on 9 October 2017, in terms of the tenancy agreement, the correct ish date for the tenancy which should have been contained in the notices was 9 August 2019, not 8 August 2019.
12. The applicant was not present at the CMD to ask the tribunal to grant the application, and there had been no communication received from the applicant or her representative.

Decision

For the reasons set out above, the tribunal determined that the application should be dismissed and that an order for possession should not be granted.

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.



Legal Member/Chair

13/2/20

Date