



**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/18/0252

Re: Property at 1/1, 12 Campbell Street, Johnstone, PA5 8EJ (“the Property”)

Parties:

Mr William Moore, Roshven, 33 Tandlehill Road, Kilbarchan, PA10 2DD (“the Applicant”)

Mr Darroch McCaskell, 1/1, 12 Campbell Street, Johnstone, PA5 8EJ (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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

Background

An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 66 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“2017 Rules”) seeking an order for possession upon termination of a short assured tenancy in terms of Section 33 of the Housing (Scotland) Act 1988 by William Moore against Darroch McCaskell in relation to the subjects 1/1, 12 Campbell Street, Johnstone, PA5 8EJ

Submitted with the Application was a copy of the tenancy agreement, an AT5 Form, Notice to Quit and Section 33 (1)(d) Notice and Section 11 Form.

A Case Management Discussion was assigned to take place on 25 April 2018 at 2.00pm.

Notice of the Case Management Discussion, together with confirmation that the Respondent could make written representation on the application on or before 23 April 2018, and a copy of the application was served by the sheriff officers on the Respondent on 5 April 2018. No representations were received by the Respondent.

The Applicant was requested to provide evidence that the applicant had title and interest to raise the proceedings, as the title deeds show the proprietor as W S Moore Properties Limited; a written statement as to why the notice seeks vacant possession as at 16 January 2017 was also sought.

The Hearing/Case Management Discussion

Martyn Johnstone, and Kelly Deans both from Pennylane Homes, Letting Agents, appeared on behalf of the Applicant. There was no appearance by the Respondent.

I was satisfied that the Respondent had received notice of the Case Management Discussion. Accordingly, I was prepared to proceed in the absence of the Respondent.

There were preliminary matters to address; I noted that I had not had sight of execution of service of the Notice to Quit and the Section 33 Notice. There was therefore a short adjournment until the applicant's agents arranged for me to have sight of these documents. I am satisfied that the recorded delivery slips provided relate to the service of the Notice to Quit and the Section 33 Notice on the respondent. The applicant's agent confirmed that the applicant had advised him that the W S Properties Limited was his company and that he had title and interest in this matter. I am satisfied that he does have title and interest to pursue these proceedings. I consider that the reference to "16 January 2017" in the section 33 notice was erroneous and was meant to say 16 January 2018, I note that the correspondence was all dated 10 November 2017 and the Notice to Quit stated "16 January 2018". I think it is clear that the date that the applicant was seeking to end the tenancy was 16 January 2018 and not 2017.

The Applicant's agent submitted that he was seeking an order for recovery of possession in terms of Section 33 of the Housing (Scotland) Act 1988. I noted that with the application there had been submitted, a tenancy agreement, AT5 Form, Notice to Quit and Section 33 notice. There was also submitted a Section 11 Form. The Applicant's agent confirmed that service of the Notice to Quit and Section 33 (1)(d) Notice has been served on the Respondent with evidence of service supplied during the case management discussion.

Findings in Fact

I have found the following facts established:-

A tenancy agreement existed between the Applicant and the Respondent. It was entered into on 16 February 2017 the tenancy commenced on that date and ended on 16 August 2017. If not brought to end on that date it would continue on a monthly basis thereafter until ended by either party giving two month's written notice. An AT5 Form by the landlords, to the Respondent, had been signed and dated on 16

February 2017. Accordingly, I consider that there was a properly constituted Short Assured Tenancy between the parties.

A Notice to Quit and Section 33 Notice dated 10 November 2017, had been sent on 10 November 2017 and collected by the Respondent by recorded delivery mail on 16 November 2017. I considered that the notice periods in the Notice to Quit and the Section 33 Notice complied with statutory and tenancy agreement requirements.

I noted that a Section 11 Notice to Renfrewshire Council had also been submitted with the application.

No written or verbal representations were received or made by Respondent disputing any of these facts or raising any other relevant issue.

Reasons for Decision

I have found the tenancy was a property constituted short assured tenancy.

Section 33 of the Housing (Scotland) Act 1988 deals with recovery of possession on termination of a short assured tenancy. Under this section I am obliged to make an order for recovery of possession of a house if I am satisfied that the short assured tenancy has reached its term; that tacit relocation is not operating; that no further contractual tenancy is for the time being in existence; and that the landlord has given to the tenant notice that he requires possession of the house.

I have found that the Applicant has provided evidence of a notice to quit and section 33 (1)(d) notice providing the appropriate period of notice, and terminating the tenancy on the term date together with evidence of intimation of service.

In terms of Rule 17 of the 2017 Rules I am entitled to do anything at a case management discussion which I may do at a hearing, including making a decision.

I have found that the Applicant has complied with the terms of Section 33 of the Housing (Scotland) Act 1988. Accordingly, finding the statutory requirements complied with I consider that I am required to make an order for recovery of possession under Section 33 of the Housing (Scotland) Act 1988.

Decision

I grant an order for recovery of possession under Section 33 of the Housing (Scotland) Act 1988 in favour of the Applicant against the Respondent.

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.

M Barbour

Legal Member/Chair

26 . 4 . 18
Date