

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/18/2213

Re: Property at 14 Gladstone Place, Edinburgh, EH6 7LY (“the Property”)

Parties:

Mr Peter Lynn, C/O Rettie & CO, 4 Jamaica Street, Edinburgh, EH3 6HH (“the Applicant”)

Ms Laura MacAlister, 14 Gladstone Place, Edinburgh, EH6 7LY (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the respondent.

STATEMENT OF REASONS

1. This application called before me for a Case Management Discussion together with the civil proceedings case CV/18/2215. The applicant was represented by Mr Gardner, solicitor. The respondent was personally present.
2. I began by explaining the purpose of the Case Management Discussion in terms of Rule 17(3) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. In particular, I advised parties that the purpose of the Case Management Discussion was to:-
 - (a) identify the issues to be resolved;
 - (b) identify what facts are agreed between the parties;
 - (c) raise with parties any issues the tribunal requires to be addressed;
 - (d) discuss what witnesses, documents and other evidence will be required;

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- (e) discuss whether or not a hearing is required;
 - (f) discuss an application to recall a decision (if applicable);
 - (g) identify if there are any other parties that could be involved in application
3. The parties were agreed that the Property had been let by the applicant to the respondent under and in terms of a Short Assured Tenancy dated 3 August 2018. The respondent confirmed that the tenancy agreement produced with the application was the tenancy agreement between the parties. The respondent confirmed that she had received service of the Notice to Quit and Notice under section 33 of the Housing (Scotland) Act 1988 produced by the applicant with this application.
 4. The respondent advised me that she no longer wished to remain at the property, but had experienced difficulties trying to obtain alternative suitable accommodation. She explained to me that her daughter had very serious disabilities. Due to the housing shortage, she explained that she faced the very real prospect of being separated from her daughter for a period until suitable accommodation was found. She explained that this process had arisen initially out of a difficulty she had experienced with housing benefit which, she maintains, was not of her creation. However, with commendable candour, she recognised that the landlord needed the property back under explanation that she had hoped to be in a position to leave without the need for this application.
 5. Mr Gardner moved me to grant the eviction order. He highlighted that all required notices had been properly served and that there was no defence to the application as raised.
 6. In terms of section 33(1) of the Housing (Scotland) Act 1988, the Tribunal is required to "make an order for possession of the house if the Tribunal is satisfied: (a) that the short assured tenancy has reached its term; (b) that tacit relocation is not operating; and ... (d) that the landlord... has given to the tenant notice stating that he requires possession of the house." In terms of section 33(2), the period of notice (unless otherwise provided for in the tenancy agreement) is two months.
 7. In terms of clause THREE of the tenancy agreement, the tenancy commenced on 3 August 2016 and had an initial duration of eighteen months, terminating on 3 February 2018. Thereafter, it continued on a month to month basis, with an end on the 3rd of each consecutive calendar month. Clause THREE also provided that the monthly rolling tenancy agreement could be terminated by either party giving two months' notice to quit.
 8. The Notice to Quit was issued on 24 April 2018. It provided that the tenancy agreement would terminate on 3 July 2018. I am satisfied that the Notice to Quit gave the required period of notice to terminate the contractual tenancy and thereby stop tacit relocation from operating.

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9. The notice under section 33 of the Housing (Scotland) Act 1988 was issued on 30 April 2018. It gave notice that the applicant required repossession of the property as at 3 July 2018. I am satisfied that the section 33 notice gave the period of notice required by section 33 of the 1988 Act.

10. I have considerable sympathy for the respondent in this case. She finds herself in a harrowing situation. She faces, in the near future, the prospect of being separated from her daughter whilst suitable housing is found for them both. However, notwithstanding my sympathy, I am bound by section 33 of the 1988 Act. I am satisfied that the tenancy agreement has reached its end, that tacit relocation is not operating, and that notice under section 33 has properly been given. Accordingly, I am bound to grant the eviction order, and do so.

11. For completeness, I then considered the civil application and determined to fix a Hearing on the value of rent arrears owed by the respondent to the applicant. That application will continue to a hearing on 8 January 2019.

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.

Andrew Upton

Legal Member/Chair

30 OCTOBER 2018

Date