

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/18/2638

Re: Property at 5D, Melbourne Street, Craigshill, Livingston, EH54 5HW (“the Property”)

Parties:

Mrs Jennifer Harper, 24 Byrehope Road, Uphall, West Lothian, EH52 5SP (“the Applicant”)

Mr David Guthrie, 5D Melbourne Street, Craigshill, Livingston, EH54 5HW (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a hearing and that the application should be granted, and the Tribunal made an Order for Possession of the Property

Background

By application, received by the Tribunal on 3 October 2018, the Applicant sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”).

The application was accompanied by copies of a Short Assured Tenancy Agreement commencing 19 January 2015, a Notice to Quit, dated 17 July 2018, a Section 33 Notice, also dated 17 July 2018 and proof of service by sheriff officer of both Notices on 17 July 2018. Both Notices required the Respondent to vacate the Property by 19 September 2018. The Short Assured Tenancy Agreement, if not ended by either party on 20 July 2015, was to continue on a monthly basis until terminated by either party giving no less than 2 months’ notice to the other party.

By letter, dated 21 November, the Tribunal advised the Parties of the date, time and venue of a Case Management Discussion and the Respondent was invited to make written representations no later than 10 December 2018.

The Case Management Discussion

A Case Management Discussion was held at George House, 126 George Street, Edinburgh on the morning of 14 December 2018. The Applicant was represented by Shirley Hepworth and Kim Merrick of Almond Valley Property Centre, 7&8 Inchwood Park, Bathgate, West Lothian EH48 2FY. The Respondent was present at the Case Management Discussion.

Immediately prior to the commencement of the Case Management Discussion, the Respondent provided the Tribunal and the Applicant's representatives with copies of a letter, dated 9 December 2018, which comprised his written representations. The Tribunal had no prior knowledge of this letter, but was prepared to accept it, as the Applicant's representatives, having had an opportunity to read it, did not object to its being admitted in evidence.

The letter was concerned primarily with issues the Applicant had with the condition of the Property and the conduct of the letting agents during the tenancy. The Tribunal advised the Respondent that the issues he raised were not relevant to the present application, but that it was open to him to lodge an application with the Tribunal if he thought the Property did not meet the repairing standard.

The Respondent accepted that the correct procedures had been gone through and that an Order for Possession would be made.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it would make a decision without a hearing.

Section 33 of the 1988 Act states that the Tribunal must make an Order for Possession of a property let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its end, 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 (s)he requires possession of the house (a Section 33 Notice). The Tribunal was satisfied that the tenancy had reached its end, that a Notice to Quit having been served, tacit relocation was not operating, that no further contractual tenancy was operating and that a Section 33 Notice had been validly served on the Respondent. Accordingly, the requirements of Section 33 of the 1988 Act had been met and the Tribunal was obliged to grant the Order for Possession sought by the Applicant.

Decision

The Tribunal, being satisfied that the requirements of Section 33 of the 1988 Act had been met, determined that the application should be decided without a hearing, that the application should be granted, and that an Order should be made 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.

G Clark

Legal Member/Chair

14 December 2018

Date