



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/22/1853

Re: Property at 1/L 185 Clepington Road, Dundee, DD3 7TA (“the Property”)

Parties:

Discovery Estates No1 Ltd, 165 Brook Street, Dundee, DD5 1DJ (“the Applicant”)

Ms Muriel Cochrane, 1/L 185 Clepington Road, Dundee, DD3 7TA (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicant.

Background

1. The Applicant seeks an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). A short assured tenancy agreement, AT5 notice, copy Notice to Quit, Section 33 Notice, Royal Mail track and trace report and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 were lodged in support of the application.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 26 October 2022. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 6 December 2022 at 10am and that they were required to participate. Both were provided with a telephone number and passcode.

3. The CMD took place by telephone conference call on 6 December 2022 at 10am. The Applicant was represented by Mr Lawson, solicitor. The Respondent did not participate and was not represented.

Case Management discussion

4. Mr Lawson told the Tribunal that the Applicant seeks recovery of possession of the property in terms of Section 33 of the 1988 Act. He stated that the Applicant is a limited company with two directors, Mr and Mrs Carling. The company owns a number of properties. Mr and Mrs Carling no longer reside in the UK and have decided to sell their portfolio of properties. This is partly because they now have to rely on letting agents and solicitors to deal with the properties, and this is expensive. The changes introduced by the Coronavirus legislation and the recent Cost of Living Act have also contributed to their decision.
5. Mr Lawson advised the Tribunal that the Respondent was recently in contact with the letting agent and is still living at the property. She resides there with a teenage child. Ms Cochrane is unemployed, and her rent is paid directly by universal credit. The Applicant has no other information about her personal circumstances. There have been no rent arrears or other tenancy related issues although the Respondent did previously make a repairing standard application. The Tribunal found in favour of the Applicant. There have been some related issues with the way in which the Respondent has interacted with the letting agent.
6. Mr Lawson told the Tribunal that he has been contacted by Shelter on two occasions. They asked whether the application for an order for possession was proceeding. Later, they asked for an update on that application. During the discussions, Shelter indicated that the Respondent wishes to vacate the property but cannot obtain alternative accommodation from the Council until the order for possession is granted.

Findings in Fact

7. The Applicant is the owner and landlord of the property.
8. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
9. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 12 November 2021.
10. The Applicant intends to sell the property.
11. The Respondent resides at the property with a teenaged child.

Reasons for Decision

12. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 2 July 2015 until 2 January 2016, with a provision that it continued on a month to month basis thereafter.
13. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
14. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that AT5 Notice was given to the Respondent prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
15. From the documents submitted with the application, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondent on 12 November 2022. The Notice to Quit called upon the Respondent to vacate the property on 2 June 2022, an ish date. The Notice contains the information prescribed by the Assured tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 12 November 2022 and gave the Respondents more than 6 months notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
16. The version of Section 33 of the 1988 Act, as amended by the Coronavirus (Scotland) Act 2020, which applied at the date of service of the Notices on the Respondent states “(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its finish; (b) that tacit relocation is not operating; (c) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and (d) that it is reasonable to make an order for possession” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be

– (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period; (ii) in any other case, six months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondent, giving at least six months’ notice that the Applicant required possession of the property.

17. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.

18. The Tribunal notes the following: -

(a) The Respondent did not lodge written representations and did not attend the CMD. She has not opposed the application.

(b) The Applicant’s representative has been contacted by Shelter who have confirmed that the Respondent wishes to move out of the property and hopes to secure accommodation in the public sector if an order for possession is granted.

(c) The Applicant wishes to sell the property as its directors no longer reside in the UK and are in the process of selling their portfolio.

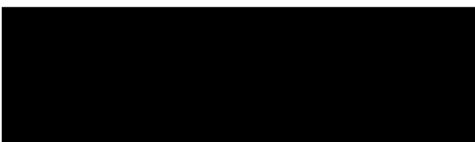
19. In the circumstances, the Tribunal determines that it is reasonable to grant the order for possession.

Decision

20. The Tribunal determines that an order for possession of the property should be granted 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.



Josephine Bonnar, Legal Member

6 December 2022

