



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 66 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/19/0515

Re: 31 Dalry Road, Kilbirnie, KA25 6JA ("the Property")

Parties:

SJBMAC Investments, C/O Tax Assist Accountants, 28-30 North Street, Dalry, KA24 5DW ('the Applicants')

Andrew Fallon residing at 31 Dalry Road, Kilbirnie, KA25 6JA ('the Respondent')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Member: Jacqui Taylor (Legal Member)

Background

1. The Applicants applied to the Tribunal for eviction/ possession of the Rented Property under section 33 of the Housing (Scotland) Act 1988, in terms of Rule 66 of the Procedure Rules. The application was dated 16th February 2019. The application states: 'Tenant has been served notice to leave but has not vacated the Property by the required date.'

2. Documents lodged with the Tribunal were:-

2.1 The Tenancy Agreement dated 9th May 2015.

2.2 Form AT5 dated 4th May 2015.

2.3 A copy of the Notice to Quit dated 23rd November 2018 giving the Tenant formal notice to quit the Property by 16th February 2019.

2.4 A copy of the Section 33 Notice to the Tenant dated 23rd November 2018 advising him of the Landlords' requirement to possess the Property as at 16th February 2019.

2.5 Certificate of execution of notice to quit by David Orr, Sheriff Officer dated 27th November 2018 confirming that the notice to quit and section 33 notice had been served on the tenant on 27th November 2018.

2.6 Section 11 Notice addressed to North Ayrshire Council.

3. Case Management Discussion

3.1 This case called for a Case Management Discussion (CMD) at 10am on 18th April 2019 in Greenwood Conference Centre, Dreghorn, Irvine. Scott Macmillan, Director of the Applicants was present. The Respondent was not present and was not represented. The Respondent had been served with a letter advising him of the CMD by, Stuart Miller, Sheriff Officer on 28th March 2019.

4. The Tribunal identified with the Applicants' representative the following agreed facts:

4.1 The Applicants are Landlords of the Property. They are owners of the Property and their title is registered in the Land Register of Scotland under title number AYR25029.

4.2 The Respondent is Tenant of the Property in terms of the Short Assured Tenancy between the parties. The term of the Tenancy was 9th May 2015 to 16th November 2015 and monthly thereafter until terminated by either party.

5. Requirements of Section 66 of the Procedure Rules.

(a) The Tribunal confirmed that the application correctly detailed the requirements of section 66 of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlord.
- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenants.

(b) The Tribunal confirmed that the application had been accompanied by the documents specified in Section 66(b) of the Procedure Rules:

- (i) The Tenancy Agreement.
- (ii) The Notice that the tenancy is a short assured tenancy.
- (iii) The notice given to the tenant under section 33(1)(d) of the 1988 Act.
- (iv) The notice to quit served by the Landlords on the Tenant.
- (v) The required notice giving North Ayrshire Council notice of the proceedings under section 11 of the Homelessness etc Scotland Act 2003.

The Applicants confirmed that the section 11 notice had been sent to North Ayrshire Council by email and they had received an acknowledgement.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords as required by Section 66(c) of the Procedure Rules.

6. Requirements of Section 33 of the Housing (Scotland) Act 1988

The Applicants confirmed that there is no further contractual tenancy agreement between the parties.

The tenancy commenced on 9th May 2015 and ended on 16th November 2015 and continued month to month thereafter. Notice to Quit and section 33 notice had been served on the Tenant by Sheriff Officer. Both documents required the Tenant to

vacate the Property on 16th February 2019, being the ish of the tenancy. The required two months period of notice had been provided.

The Tribunal were satisfied that the requirements of section 33 have been met, namely that:

- (i) The Short assured Tenancy has reached its ish.
- (ii) That tacit relocation is not operating.
- (iii) That no further contractual tenancy is in existence.
- (iv) That the Landlords have given to the Tenant notice stating that they require possession of the Property. In terms of section 33(2) the period of notice is two months.

7. Decision

The Tribunal determined that the requirements of section 33(1) of the Housing (Scotland Act) 1988 had been complied with and made an order for possession of the Property.

8. 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.

Ms Jacqui Taylor

Legal Member

18th April 2019