



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/18/0325

Re: Property at 57 Oak Road, Cumbernauld, G67 3LD (“the Property”)

Parties:

Ms Barbara Blackett, Ms Lara Catani, Flat 03, 5 Dalveen Street, Shettleston, Glasgow, G32 7DS; 17 The Larches, Moodiesburn, Glasgow, G69 0JZ (“the Applicant”)

Ms Leeanne Elliot, 57 Oak Road, Cumbernauld, G67 3LD (“the Respondent”)

Tribunal Members:

Eleanor Mannion (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 dated 5th February 2018 was received by the First-tier Tribunal for Scotland, Housing and Property Chamber (“the Tribunal”). The Application was made under Rule 65, seeking possession of an assured tenancy. The Application was accompanied by a copy of the tenancy agreement, an AT5 Notice, a Notice to Quit, a Section 33 Notice, Execution of Service of Notice, copy bank statements, copy rental statement, a Section 11 Notice. This application was sifted and accepted by the Tribunal on the 4th April 2018.

- **Case Management Discussion**

A Case Management Discussion was scheduled for the 12th June 2018. In advance of this hearing, a copy of the papers was served upon the Respondent by Sheriff Officers on the 8th May 2018. The Respondent was advised in the covering letter that she should lodge any written representations by 28th May 2018. She was further advised that a decision may be made at the Case Management Discussion, including the making of an eviction order.

No representations were received by the Tribunal by the 28th May or indeed by the date of the Case Management Discussion, namely 12th June 2018. The Respondent did not attend at the Case Management Discussion which was scheduled to take place at 2.00pm on the 12th June 2018. The start of the Case Management Discussion was briefly delayed to give the Respondent every opportunity to attend.

The Applicants were not in attendance but instead represented by TCH Law, specifically Tracey Campbell Hynde. Ms Campbell Hynde was accompanied by her colleague, Caitlin McNiven.

Ms Campbell Hynde confirmed that her clients were seeking eviction but noted that the tenant has since vacated the property. No imitation of leaving the property was made to the Applicants in advance. This was only ascertained when undertaking a routine inspection. Ms Campbell Hynde advised that in any event, her clients were seeking the order for their protection, although it is a relatively moot point at this stage.

I noted that the application was made pursuant to Rule 65 of the First-tier Tribunal Housing and Property Chamber (Procedures) Regulations 2018 ("the Chamber Rules") but the tenancy agreement would appear to be a short assured tenancy. Ms Campbell Hynde stated that she noted this last night and ideally this application would be made under Rule 66. She requested that the application be considered as a Rule 66 possession of a short assured tenancy application. Taking into account the overriding objective of the Tribunal as set

out in Rule 2 of the Chamber Rules, I concluded that I would consider this application under Rule 66.

As the application referred to rent arrears, Ms Campbell Hynde advised that the rent account shows the rental payment which was due on a monthly basis. This rent was not paid and has not been paid throughout 2017. The monthly rental payment is £430, payable on the 16th of each month. I was advised that the Applicants have been in continual contact with the tenant but there was no move to pay rent and so the Applicants served the appropriate notices and applied for possession.

I noted that the tenancy agreement does not refer to Schedule 5 of the Housing (Scotland) Act 1988 and does not set out the 17 grounds for possession. I asked Ms Campbell Hynde to consider the content of Section 18(6) of the 1988 Act which requires that the tenancy agreement make provision for the tenancy to be brought to an end on a particular ground or grounds as set out in Schedule 5 of the same Act. Ms Campbell Hynde noted that the AT5 does appear to be incomplete, but that parties completed these documents themselves without taking any legal advice as to the content. She stated that there is a reference to the 1988 Act within there and the spirit of the agreement is that it would comply with the Act. She reiterated that the landlords prepared the paperwork themselves.

I noted that a Section 33 Notice had also been served on the Respondent and asked about this. Ms Campbell Hynde noted that this was done to protect her client's position.

I asked which route she was applying under – the Section 33 Notice or Ground 8 of Schedule 5 of the 1988 Act. I stated that a short adjournment could take place to allow her to take instructions or consider her options. She advised that she did not require to take instructions as the tenant has vacated the property but that the Applicants seek an order in any event, whether that is under Section 33 or Ground 8, she advised that she was in the Tribunal's hands.

- **Findings in Fact**

A tenancy agreement was entered into on the 23rd March 2017 for a period of 6 months. It refers to a monthly rent of £430 payable on the 16th of each month.

The Rent statement shows no rent being paid to date.

A Notice to Quit dated 18th October 2017 was served on the Respondent by Sheriff Officers on the 20th October 2017. This was accompanied by an AT6 Notice and a Section 33 Notice.

An Application was made to the Tribunal dated 5th February 2018 seeking an order for possession.

- **Reasons for Decision**

Section 33 of the Housing (Scotland) Act 1988

33 Recovery of possession on termination of a short assured tenancy.

(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 shall 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; and

(c)

(d) 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.

Section 18 (6) of the Housing (Scotland) Act 1988

The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9... Ground 10, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

Based on the above wording of Section 18(6)(b) I am of the view that as the tenancy agreement does not refer to or outline the grounds for possession set out in Schedule of the 1988 Act, despite Ground 8 potentially being fulfilled, I am unable to make an order based on that Section. Instead, I have focused the application on Section 33 and considered the provision of the Act and the Notice as served on the Respondent.

- **Decision**

Having considered the paperwork and the submissions made before me, I am granting an order for possession, pursuant to Section 33 of the Housing (Scotland) Act 1988. I am satisfied that the conditions of this Section are fulfilled, that the short assured tenancy has reached its finish date, tacit relocation is not operating and the appropriate notices have been provided by the landlord to the tenant.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

E Mannion

Legal Member/Chair

Date

12/6/18

