



**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/18/0038

Re: Property at 85B Tower Drive, GOUROCK, PA19 1TD (“the Property”)

Parties:

**Mr Daniel McAleese, Mrs Vanessa McAleese, 92H Tower Drive, Gourock, PA19
1TL (“the Applicants”)**

Ms Jay Millar, c/o 38 Wren Road, Greenock, PA16 7NH (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

1. This is an application by the Applicants for an order for possession on termination of a short assured tenancy in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The tenancy in question was a Short Assured Tenancy of the Property by the Applicants to the Respondent commencing on 12 June 2017.
2. The application was dated 4 January 2018 and lodged with the Tribunal shortly thereafter.
3. The application relied upon a Notice to Quit and a notice in terms of section 33 of the Housing (Scotland) Act 1988, both dated 5 October 2017, providing the Respondent with notice (respectively) that the Applicants sought to terminate the Short Assured Tenancy and have the Respondent vacate, each by 12 December 2017. Evidence of service of the said

notices by Sheriff Officers upon the Respondent on 6 October 2017 was provided with the application.

4. Evidence of a section 11 notice dated 15 January 2018 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Inverclyde Council was provided with the application.

The Hearing

5. On 1 June 2018, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at Gamble Halls, Gourock, I was addressed by Sharon Dolan, solicitor at Neill, Clerk & Murray, being the agent for the Applicants.
6. There was no appearance by the Respondent. The Tribunal had received a report from its Sheriff Officer on 20 April 2018 in which the Respondent's mother indicated that the Respondent "had moved out of the subject property in October 2017". The said intimation by the Sheriff Officers was of the date of the CMD and was made to a new address for the Respondent, being her mother's address. The Applicant's agent confirmed that no direct contact had been received from the Respondent in regard to the notices or the application. I was advised of no contact received from the Respondent by the Tribunal. I was satisfied in the circumstances to proceed in the absence of the Respondent.
7. The Applicant's agent confirmed that, notwithstanding the Respondent appeared to have left the Property, she had never communicated this to the Applicants or their agents. She had left belongings at the property, including belongings of her children. Contact was made with the paternal grandparents of the Respondent's children but they said they had not had recent contact with her. Access to the Property had been taken on behalf of the Applicants due to an environmental health issue (as the Respondent has left food stuffs and rubbish at the property, resulting in complaints). This is how the Applicants were aware of the ambiguous way in which the Respondent had vacated. Further, the Respondent was last seen at the property long before the ish date under the notices. The Applicants had thus been apprehensive as to taking possession without an order of the Tribunal and still sought an order in the application.
8. The Applicants' agent sought expenses given the behaviour of the Respondent in failing to provide keys or give any other indication that she had voluntarily vacated, as well as the condition in which she had left the property. In all the circumstances, the Applicants' agent said that the Applicants had been caused unnecessary and unreasonable expense and were prejudiced by not being able to recover the property earlier.

Findings in Fact

9. On 31 May 2017, the Applicants let the Property to the Respondent by lease with a start date of 12 June 2017 and an end date of 12 December

2017, thereafter continuing on a month to month basis until terminated ("the Tenancy").

10. The Tenancy was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988 further to the Applicant issuing the Respondent with a notice under section 32 of the 1988 Act (an "AT5") on 28 May 2017, prior to commencement of the Tenancy.
11. On 5 October 2017, the Applicants' agent drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that she was to quit the Property by 12 December 2017.
12. On 5 October 2017, the Applicants' letting agent drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the Applicant required possession of the Property by 12 December 2017.
13. 12 December 2017 is the ish date of the Tenancy.
14. On 6 October 2017, Sheriff Officers acting for the Applicants' agent competently served each of the notices upon the Respondent. The Respondent was thus provided with sufficient notice of the Applicants' intention that the Tenancy was to terminate on 12 December 2017.
15. On 4 January 2018, the notice period under the notices having expired, the Applicants raised proceedings for an order for possession with the Tribunal, under Rule 66, the grounds of which being that the Tenancy had reached its ish; that tacit relocation was not operating; that no further contractual tenancy was in existence; and that notice had been provided that the Applicants require possession of the Property all in terms of section 33 of the 1988 Act.
16. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Inverclyde Council on or around 15 January 2018 on the Applicant's behalf.
17. On 19 April 2018, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 1 June 2018.

Reasons for Decision

18. The application was in terms of rule 66, being an order for possession upon termination of a short assured tenancy. I was satisfied on the basis of the application and supporting papers that the necessary notices had been served with sufficient notice, the Respondent had vacated prior to their expiry, and was extending no defence or dispute to the notices, and thus the requirements of the 1988 Act had been complied with.

19. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. I was thus satisfied to grant an order for possession.

20. In regard to the motion for expenses, the power to grant expenses by this Chamber is in terms of rule 40: "The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense." I was not satisfied that this test was satisfied. The prejudice cited by the Applicants' agent was principally a delay in recovery of the Property. It was accepted by the Applicants' agent that the Applicants had taken a cautious approach by not simply regarding the Respondent's actions as voluntary surrender. Any "unreasonable expense" occasioned was not, however, in the application but in regard to their property rights. The Respondent's vacation of the Property only occasioned the Applicant's agent in a need to trace a new address. I did not regard this as "unnecessary or unreasonable expense". Further, the Respondent had not taken any steps under the application at all, beyond – at most – having her mother confirm to the Tribunal's Sheriff Officers that she no longer resided at the Property. I was not satisfied that the Respondent had engaged in "unreasonable behaviour in the conduct of a case". In the circumstances, I refused the motion for expenses.

Decision

21. In all the circumstances, I make the decision to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988 in normal terms and refuse the motion for expenses under rule 40.

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.

JOEL CONN

Legal Member/Chair

1 June 2018

Date