

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/18/0435

Re: Property at 17 Drumine Road, Forres, IV36 1HX (“the Property”)

Parties:

Mr Robert Patience, 5 Main Street, New Elgin, Elgin, IV30 6BQ (“the Applicant”)

Ms Michelle Owens, 17 Drumine Road, Forres, IV36 1HX (“the Respondent”)

Tribunal Members:

Helen Forbes (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the Application dated 14th February 2018 by the Applicant, made in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Background

1. This is an application in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for recovery of possession of the Property in terms of s33 of the Housing (Scotland) Act 1988 (“the Act”).
2. The Tribunal had before it the following documents:
 - (i) Application dated 14th and received by the Tribunal on 16th February 2018 stating that application was to proceed under rules 65 and 66.
 - (ii) Tenancy agreement between the parties dated 1st and 3rd August 2012.
 - (iii) Form 32 dated 3rd August 2012

- (iv) Notice to Quit dated 1st November 2017
- (v) Certificate of Intimation of Notice to Quit served on 3rd November 2017 by Sheriff Officers.
- (vi) Section 11 Notice to Local Authority with acknowledgement of receipt dated 8th February 2018.
- (vii) Copy rent account for period from February 2017 to January 2018.
- (viii) Letter from the Tribunal dated 2nd March 2018 asking for confirmation on whether the Application is to proceed under Rule 65 or Rule 66.
- (ix) Letter from Applicant's solicitor dated 19th March 2018 clarifying that the intention is to proceed under Rule 66.
- (x) Title Information – Land Register – Title Number MOR1887

Case Management Discussion

3. The Tribunal held a case management discussion on 6th June 2018. The Applicant was present. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Tribunal considered the Application and determined that the notice required by Section 33 of the Act had not been served upon the Respondent. The Tribunal drew this to the attention of the Applicant. The Applicant said that a Notice to Quit had been served by his solicitor, but he was unaware that a Section 33 notice was also required.

Findings in Fact

4. The lease between the parties is a Short Assured Tenancy with provision for the lease to continue on a month to month basis at the end of the initial 6 month period. A notice in terms of Section 33 of the Act is required to give the tenant/Respondent notice that the landlord/Applicant requires possession of the Property, before an order for recovery of possession can be granted. No such notice has been served by the Applicant upon the Respondent.

Reasons for Decision

5. The Tribunal was not satisfied that the requirements of Section 33 of the Act had been met to allow an order to be made, namely that notice in terms of Section 33 had not been given.

Decision

6. The Tribunal dismissed the application for an order for recovery of possession.

The Tribunal recommended that the Applicant take legal advice in connection with this matter as it is likely that a fresh application will be made.

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.

HELEN FORBES

Legal Member/Chair

Date 6th June 2018