

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 Section 33 of the Housing Scotland Act 1988

Chamber Ref: FTS/HPC/EV/18/1323

Re: Property at 73H Watson Street, Dundee, DD4 6HG (“the Property”)

Parties:

ICM Housing Ltd, The Leap, 12 Hillside Crescent, Dumfries and Galloway, DG13 0EE (“the Applicant”)

Mr Lukasz Domanski, 73H Watson Street, Dundee, DD4 6HG (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision (in absence of the Respondent)

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

Background:

On 20 June 2018 the Tribunal accepted for determination an application made on 25 May 2018 by the Applicants through their agents Struan Baptie Property Management Ltd for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988. The Applicants lodged with the application the Short Assured Tenancy Agreement dated and commencing 8 May 2015 as well as a copy of the AT5 signed 7 May 2015, the Notice to Quit and S 33 Notice both dated 30 January 2018 and the Sheriff Officers letters confirming service of these on the Respondent on 7 February 2018. The bundle also contained the S 11 Notice to the Local Authority under the Homelessness etc (Scotland) Act 2003 and an AT6 notice.

The application was intimated to the Respondent and a Case Management Discussion fixed for 23 August 2018, which was attended by Melissa Coleman from Struan Baptie Property Management Ltd for the Applicants. The Respondent, Mr Domanski, had been advised of the date and time and location of the Case Management Discussion by the Tribunal by letter served on him by Sheriff Officers on 25 July 2018. The parties were advised that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application.

The Respondent had been given the 14 days notice required in Rule 24 of the Rules of Procedure. No representations were received from the Respondent and he did not attend the Case Management Discussion.

In terms of Rule 29 the hearing thus took place in his absence.

The Hearing:

Ms Coleman for the Applicants stated that the tenancy for the property is a Short Assured Tenancy. She referred the Tribunal to the documentation lodged with the application showing that a Notice to Quit and a Notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 had been service on the Respondent by Sheriff Officers on 7 February 2018 giving the required 2 months notice in terms of S33 of the Act. She moved for an order for repossession of the property. She explained the Applicants are seeking the order because they are wishing to sell the property.

The Tribunal concluded that as there facts in this case were not disputed by any representations from the Respondent, it was not necessary to adjourn the case to a further hearing. The agent for the Applicants referred the Tribunal to S 33 (1) of the Housing (Scotland) Act 1988 and moved for an order. If the tests of S 33 (1) of the Housing (Scotland) Act 1988 are met there is no discretion for the Tribunal and the order must be granted. All issues were discussed at the hearing and the facts of the case were clear.

Findings in Fact:

- 1. The Applicants and the Respondents entered into a Short Assured Tenancy on 8 May 2015 with an end date at 8 November 2015 (Clause 1 of the Short Assured Tenancy Agreement) with a continuation on a monthly basis (Clause 1).**
- 2. Notice to Quit was served on the Respondents by Sheriff Officers on 7 February 2018 advising of the termination of the tenancy on the ish on 8 April 2018.**

3. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondents by Sheriff Officers on 7 February 2018 advising of the intention to repossess the premises on 8 April 2018.
4. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
5. The Respondent had remained in the property at the date of the hearing.

Reasons for the Decision:

The Tribunal make the decision on the basis of the written evidence lodged by the Applicants. There was no dispute about the facts of the case.

In terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its ish
2. That tacit relocation is not operating
3. That no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
4. That the landlord has given to the tenant notice that he requires possession of the house.

In this case there was not dispute that the tenancy is a short assured tenancy which had reached its ish on 8 November 2015 and continued thereafter month to month. The landlord had served a notice to quit with the required 40 days notice period on 7 February 2018 for the ish on 8 April 2018 and thus tacit relocation did not operate. The contractual tenancy had come to an end. The landlord had served on the Respondents a notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 with the required 2 months notice period on 7 February 2018 for the date of 8 April 2018.

The Tribunal has no discretion in the matter. The conditions for an order for possession in terms of S 33 (1) of the Housing (Scotland) Act 1988 have been evidenced by the Applicants in the documentation lodged and are not disputed. Thus the Tribunal grants the order for possession as per the application.

Decision:

The Tribunal makes an order for possession of the Property under S 33 (1) of the Housing (Scotland) Act 1988.

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.

Petra Hennig-McFatrige

Legal Member/Chair

Date

27.8.18