

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/19/0276

Re: 12 Gunn Road, Grangemouth FK3 8RN (“the property”)

Parties:

Janice Leary, c/o KJB Housing Ltd, 28 Castle Road, Bathgate, EH48 2UQ (“the applicant”)

Let Link Ltd, 93 South Bridge Street, Bathgate, EH48 1TJ (“the applicant’s representatives”)

Ms Mary Ann Shields, 12 Gunn Road, Grangemouth FK3 8RN (“the respondent”)

Tribunal Member:

Adrian Stalker (Legal Member)

Decision (in absence of the respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the requirements of section 33(1) of the Housing (Scotland) Act 1988 were met, and therefore, the Tribunal granted an order for recovery of possession of the property in favour of the applicant.

Background

1. In February 2017, the applicants let the property to the respondent, under a short assured tenancy. The parties entered into a written tenancy agreement. This states, in clause 4, that the tenancy will commence on 15 February, and will end on 16 August 2017, and “will continue thereafter on a monthly basis”.

2. By an application received by the Tribunal on 25 January 2019, the applicant sought an order for recovery of possession under section 33 of the Housing (Scotland) Act 1988 (“the Act”).

3. On 28 February 2019, notice of acceptance was granted by a legal member. A Case Management Discussion (“CMD”) was fixed.

The CMD

4. The CMD took place at 10am on 11 April 2019, at the John Player Building, Stirling Enterprise Park, Stirling. Jacqueline Duggan, a Senior Property Manager at Let Link, appeared on behalf of the applicant. The respondent did not appear, and was not represented. She had not made any representations to the Tribunal, in advance of the CMD.

5. Under rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, the First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision. Ms Duggan asked the Tribunal to grant an order for recovery of possession, under section 33 of the Act.

6. The Tribunal sought clarification from Ms Duggan as to the identity of the applicant. The application is made by Ms Janice Leary, of KJB Housing Ltd. The Tribunal has obtained a title sheet for the property, which shows that Janice Leary is the owner. However, the tenancy agreement runs in the name of KJB Housing Ltd as landlords, without reference to Ms Leary. Ms Duggan confirmed that KJB Housing is a limited company, and not merely a trading name used by Ms Leary. She was also able to advise the Tribunal that Ms Leary’s landlord registration runs in the name of “Janice Leary, c/o KJB Housing Ltd”. The applicant’s representatives had produced a mandate from Ms Leary, stating that she authorises KJB Housing Ltd “to act on my behalf with all letting...issues with regards to [12 Gunn Road, Grangemouth] in which I am the sole owner”.

7. In these circumstances, the Tribunal suggested that, for the purposes of this application, the applicant ought to be designed as “Janice Leary, c/o KJB Housing Ltd, 28 Castle Road, Bathgate, EH48 2UQ”, that being consistent with her landlord registration. Ms Duggan agreed.

Findings in fact, and in fact and law; reasons for decision

8. Along with the application, the applicants had produced copies of: the tenancy agreement; the AT5; a notice to quit; a section 33(1)(d) notice; a sheriff officers’ certificate of execution service of the notice to quit and section 33 notice, indicating

that service took place on 14 November 2018; and notice to the local authority (under section 19A of the Act), sent by email to Falkirk Council on 25 January 2019.

9. The Tribunal was satisfied that these notices were in order. In particular, the notice to quit contained the requisite information, and bore to take effect on 16 January 2019, an ish of the tenancy, which was more than 40 days after service of the notice to quit was effected. The notice under section 33(1)(d) confirmed that the applicants required possession of the property, on 16 January 2019, more than 2 months after service of the notice was effected. Ms Duggan confirmed that there was no other further contractual tenancy in existence.

10. Accordingly, the Tribunal was satisfied that: (a) the parties' tenancy had reached its ish; (b) the tenancy had been terminated on 16 January 2019 and tacit relocation was not operating; (c) there was no other contractual tenancy between the parties in existence; (d) notice had been given under section 33(1)(d) of the Act; (e) notice had also been given the local authority under section 19A of the Act.

11. The requirements for an order for possession under section 33(1) are met. Accordingly, the Tribunal is required to grant an order for possession under that provision.

Decision

12. The Tribunal accordingly granted an order for possession under section 33 of the 1988 Act, in favour of Janice Leary, c/o KJB Housing Ltd.

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.

A Stalker

Legal Member

11 / 4 / 19.

Date