

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 (“the Act”)
Chamber Ref: FTS/HPC/EV/18/0068

Re: Property at 26 Firthview Terrace, Dumbarton, G82 4DT (“the Property”)

Parties:

Mr Gregory Russell Beese (usually know as Russell Beese), 10 Trough Lane, Watnall, Nottingham, NG16 1HR (“the Applicant”)

Mr Isha Lamu and Ms Elspeth Swan, 26 Firthview Terrace, Dumbarton, G82 4DT (“the Respondents”)

Tribunal Member:

Karen Moore (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Possession under Section 33 of the Housing (Scotland) 1988 be refused and the Application be dismissed.

Tribunal Member:

Karen Moore (Legal Member)

Decision

Background

1. This is an application on behalf of the Applicant as landlord for an order for possession in terms of Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).

2. The tenancy is a short assured tenancy of the Property between the Applicant and the Respondents dated 3 November 2015 and continuing thereafter by tacit relocation.
3. An application comprising:-
 - i) a completed application form signed by the Applicant and dated 9 January 2018;
 - ii) copy tenancy agreement between the Applicant and the Respondents dated 3 November 2015 ;
 - iii) copy letter from the Applicant to the Respondents dated 25 October 2017 purporting to terminate the tenancy;
 - iv) copy Notice to Quit from the Applicant to the Respondents dated 22 November 2017;
 - v) copy notice in terms of section 19 of the Act, commonly known as "AT6", dated 22 November 2017, relying on Ground 11 of the Act from the Applicant to the Respondents and
 - vi) copy notice in terms of Section 19A of the Act as prescribed by Section 11(3) of the Homelessness Etc. (Scotland) Act from the Applicant to Renfrewshire Council with email acknowledgment thereof("the Application") was lodged with the Tribunal.
4. The Application and notice of a case management discussion of the First-tier Tribunal for Scotland Housing and Property Chamber to be held at 2.00 pm on 11 April 2018 at the Glasgow Tribunals Centre, 20 York Street, Glasgow were served on each of the Respondents by Walker Love, Sheriff Officers, on 18 March 2018 and a Certificate of Service was lodged with the Tribunal.

Case Management Discussion.

5. A case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber was held before me at 2.00pm on 11 April 2018 at the Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant and both Respondents were present.

Preliminary Matters.

6. Having explained to the parties the necessity that certain statutory requirements be complied with in order for the Application to proceed, I invited the Applicant to address me on these statutory requirements.
7. Firstly, in respect of the Notice to Quit, I invited the Applicant with reference to the Application to evidence to me that a competent Notice to Quit had been served on the Respondents. The Applicant advised that he relied on his letter to the Respondents dated 25 October 2017 purporting to terminate the tenancy which letter he had sent by special delivery and

the Notice to Quit dated 22 November 2017 from him to the Respondents which he had sent by recorded delivery.

8. Secondly, in respect of the notice in terms of Section 19A of the Act as prescribed by Section 11(3) of the Homelessness Etc. (Scotland) Act 2003, I invited the Applicant with reference to the Application to evidence to me that a competent notice had been notified to the local authority in whose area the house being the Property is situated. The Applicant advised that he relied on the notice to Renfrewshire Council and the receipt thereof.

Findings in Fact in respect of Preliminary Matters

9. With regard to Notice to Quit, I found that neither the letter of 25 October 2017 nor the Notice to Quit dated 22 November 2017, taken together or separately, constituted a competent Notice to Quit. The letter of 25 October purported to terminate the tenancy based on a breach of Clause 7.3.2 of the tenancy agreement but does not require the Respondents to quit the Property by any specified date. The Notice to Quit dated 22 November 2017 requires the Respondents to quit the Property on 12 December 2017 and as such affords the Respondents less than the required 40 days' notice period. There is no evidence that either piece of correspondence was served by recorded delivery or by Sheriff Officer, the only evidence being a proof of posting by special delivery dated 22 November 2017. Accordingly, I find that no competent Notice to Quit accompanied the Application as required by Rule 65 of the Rules.
10. With regard to the notice terms of Section 19A of the Act as prescribed by Section 11(3) of the Homelessness Etc. (Scotland) Act 2003, the local authority in whose area the Property is situated is West Dunbartonshire Council, whereas the notification given by the Applicant was to Renfrewshire Council. Accordingly, I find that no competent notice terms of Section 19A of the Act has been given by the Applicant.

Reasons for Decision

11. My decision was based on the Application and the submissions made at the CMD.
12. Based on the fact that there is neither a competent Notice to Quit nor a competent notification in terms of Section 19A of the Act, I took the view that the terms of Rule 65 of the Rules and Section 19A of the Act had not been complied with by the Applicant. I took the view that as these requirements are mandatory, I have no discretion to waive or vary them.
13. I then had regard to the terms of Rule 17(4) of the Rules and took the view that this Rule allows me, at a CMD, to make a decision on the competence of the Application. Having found that the terms of Rule 65 of the Rules

