

Housing and Property Chamber
First-tier Tribunal for Scotland



Statement of Decision 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/18/0117

Re: Property at 35 Maude Close, Kirkliston, Edinburgh, EH29 9FA (“the Property”)

Parties:

Home Group Limited, 20 Harvest Road, Newbridge, Edinburgh, EH28 8LW (“the Applicant”)

Mr Kevin Chappell, Mrs Corrina Chappell, 35 Maude Close, Kirkliston, Edinburgh, EH29 9FA (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision

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

Background:

On 29 January 2018 the Tribunal accepted for determination an application made on 15 January 2018 by the Applicants through their solicitors TC Young 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 30 May 2017 and a Rent Statement dated 3 January 2018 as well as a copy of the AT5, the Notice to Quit and S 33 Notice both dated 10 October 2017 and the Sheriff Officers letters confirming service of these on both Respondents on 11 October 2017. The bundle also contained the S 11 Notice to the Local Authority under the Homelessness etc (Scotland) Act 2003.

The application was intimated to the Respondents and a Case Management Discussion fixed for 9 March 2018, which was attended by Mr Matheson from TC Young, the Applicants’ Representative and the two Respondents.

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 Hearing:

The Respondents attended and both made representations to the Tribunal. There was agreement between the parties that the tenancy for the property is a Short Assured Tenancy . Both Respondents agreed that the Applicants had served on them a Notice to Quit and a Notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 as stated in the application. There was also agreement between the parties that the tenants had paid £1,000 last Wednesday but had made no other payments since the date on the rent statement. The Respondents explained in detail that due to the self employment of the First Respondent the Respondents had been unable to pay the rent and assured the Tribunal that the First Respondent was expecting a Tax Rebate in April, which would allow the Respondents to pay off the arrears. The reasons for the arrears were set out credibly.

The Representative for the Applicants took instructions from the Applicants during two adjournment to ascertain whether this recent payment and the promise of further payments would alter the position of the Applicants. Mr Matheson advised that his instructions were to seek the original order asked for in the application for repossession of the property.

The Tribunal concluded that as there was no dispute of the facts in this case it was not appropriate to adjourn the case to a further hearing. The Respondents were both present and had made representations at the hearing. The solicitor 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 30 May 2017 with an ish at 6 December 2017 (Clause 1.2).**
- 2. Notice to Quit was served on the Respondents by Sheriff Officers on 11 October 2017 advising of the termination of the tenancy on the ish on 6 December 2017.**
- 3. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondents by Sheriff Officers on 11 October 2017 advising of the intention to repossess the premises on 14 December 2017.**

4. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
5. The Respondents 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 and the evidence given at the hearing by the Respondents. There is 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 6 December 2017. The landlord had served a notice to quit with the required 40 days notice period on 11 October 2017 for the ish on 6 December 2017 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 11 October 2017 to 14. December 2017.

The matter of rent arrears and person financial problems, which were stated very credibly by the Respondents, unfortunately cannot be taken into account by the Tribunal as 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 has no option but to grant 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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

P Hennig-McFatrige

Legal Member/Chair

Date

9. March 2018