



**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/21/1142

Re: Property at 3/2, 90 Albert Street South, Dundee, DD4 6QH (“the Property”)

Parties:

**The BRL 1995 Discretionary Trust, Bannerman House, 27 South Tay Street,
Dundee, DD1 1NP (“the Applicant”)**

**Mr Francis Dunn, 3/2, 90 Albert Street South, Dundee, DD4 6QH (“the
Respondent”)**

Tribunal Members:

Anne Mathie (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order is granted against the Respondent for
possession of the Property under section 33 of the Housing (Scotland) Act 1988.**

Background

1. An application was made dated 12 May 2021 in terms of Rule 66 of the Chamber Rules for possession on termination of tenancy in terms of section 33 of the Housing (Scotland) Act 1988. Along with the application form the following documents were lodged:

- Copy of the tenancy agreement
- Copy of the AT5
- Copy of the Notice to Quit
- Copy of the section 33 Notice
- Copy of the section 11 Notice
- Confirmation of service of the section 11 Notice
- Letter of authority from the Landlord
- Certification of service of notices from Sheriff Officers

2. The covering email from the Applicant's representative dated 12 May 2021 explained that the application had been bounced due to being too big and they were therefore sending the application over two emails.
3. The Tribunal asked for further information in relation to title of the Property and wrote on 21 May 2021 seeking a copy of the section 11 Notice and proof of service, proof of service of the section 33 Notice and Notice to Quit, evidence of ownership of the Property and a letter of authority from owners of the Property. Receipt of this further information was requested by 4 June 2021.
4. By email dated 26 May 2021 the Applicant's representative advised that the papers had been submitted over two separate emails and queried whether the second email had not been received. He sent the requested documents again with the email.
5. The application was accepted and assigned to a Case Management Discussion today. Intimation of the application and papers was served on the Respondent by Sheriff Officers on 16 June 2021. In the papers served the Respondent was requested to submit any written representations by 7 July 2021. He was also advised of the date and time of today's Case Management Discussion and was 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 which may involve making or refusing a payment order. He was advised that if he did not take part in the Case Management Discussion, this would not stop a decision or order being made by the Tribunal if the Tribunal considers that it has sufficient information before it to do so and that the procedure has been fair.
6. No written representations were received from the Respondent.

Case Management Discussion

7. There was initially no attendance on behalf of either Party at the Case Management Discussion. The Tribunal attempted to phone the Applicant's representative but the phone was just ringing out. The Applicant's representative, Alasdair Bain of Tay Letting (East), phoned in to the Case Management at 10.30am. Due to an error, he thought the start time of the Case Management Discussion was 10.30am. The Tribunal advised that they required to consider the overriding objective to deal with proceedings justly. In these circumstances, while it was regrettable that the Applicant's representative had turned up half an hour late, the Tribunal would use the overriding objective to allow the Case Management Discussion to proceed, although later than planned.
8. The Applicant's representative requested that the order for possession of the Property be granted. He relied on the information on the application form and

supporting documents in this regard. He advised that, despite service of the Notices, the Respondent had not vacated the Property. The Applicant had not gone straight to enforcement due to the pandemic but the Respondent had now allowed the Property to fall into a state of disrepair and was now in rent arrears to the value of approximately £5000. Service of the Notices had taken place prior to the changes made by virtue of the Coronavirus legislation.

- Findings in Fact

1. The parties entered into a Short Assured Tenancy Agreement which commenced 5 October 2017. The end date was 27 April 2018. Thereafter if the tenancy agreement is not brought to an end by either party it will continue on a monthly basis.
2. A Notice to Quit and section 33 Notice were served on the Respondent by Sheriff Officers on 24 February 2020.
3. The Notice to Quit and section 33 Notice required the Respondent to remove from the Property by 27 April 2020.
4. The Respondent had failed to remove from the Property and continued to reside therein.

- Reasons for Decision

The Tribunal was satisfied that the terms of section 33 of the Housing (Scotland) Act 1988 had been met namely that the tenancy had reached its iish; tacit relocation was not operating; a notice had been served in terms of section 33 giving two months' notice and no further contractual tenancy was in existence.

The Tribunal proceeded on the basis of the information on the application form, the supporting documentation and the verbal submissions of the Applicant's representative. There was nothing before the Tribunal contradicting this evidence.

The Tribunal considered that it was not necessary to consider the reasonableness or otherwise of granting the order as Section 3 of schedule 1 of the Coronavirus (Scotland) Act 2020 provides:

"The Housing (Scotland) Act 1988 applies, in relation to a notice served on a tenant under section 19 or 33(1)(d) of that Act while this paragraph is in force, in accordance with the modifications in this paragraph."

The relevant provision of the Coronavirus (Scotland) Act 2020 came into force on 7 April 2020 and service of the Notices took place on 24 February 2020.

- Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order for possession of the Property under section 33 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.

Anne Mathie

23 July 2021

Legal Member/Chair

Date