



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/21/2940

Re: Property at 67 Ladywell Avenue, Dundee, DD1 2LA (“the Property”)

Parties:

Nevis Properties Ltd, 6th Floor, Gordon Chambers, 90 Mitchell Street, Glasgow, Scotland, G1 3NQ (“the Applicant”)

Diane Conde - Al - Abry, 67 Ladywell Avenue, Dundee, DD1 2LA (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant

Background

1. This is an application in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for recovery of possession in terms of section 33 of the Act.
2. The parties entered into a Short Assured Tenancy between 23rd November 2016 and 22nd November 2017. The rent payments of £650 per month were due on the 11th day of each month in advance.
3. The Tribunal had before it the following documents:
 - a) Application dated 24th November 2021.

- b) Short Assured Tenancy Agreement signed 23rd November 2016 and 23rd November 2017.
 - c) Form AT5 signed by the parties on 23rd November 2027.
 - d) Notice to Quit dated 7th May 2021 requiring vacant possession as at 22nd November 2021.
 - e) Section 33 Notice dated 11th November 2021 stating vacant possession required by 22nd November 2021 with proof of recorded delivery service. Both the Notice to Quit and the Section 33 notice were served by special Delivery on 13th May 2021.
 - f) Title deeds with reference ANG78542.
 - g) Section 11 Notice noting date of raising proceedings DATE 24th November 2021.
4. On 17th February 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 4th April 2022 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 10th March 2022.
5. On 18th February 2022, sheriff officers served the letter with notice of the hearing date and documentation personally upon the Respondent. This was evidenced by Certificate of Intimation dated 18th February 2022.

Case Management Discussion

6. The Tribunal held a CMD on 4th April 2022 at 2pm by teleconferencing. The Applicant was not present but was represented by Mr David Gibb, Tayside Lettings. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations prior to the CMD.
7. The Tribunal raised with Mr Gibb the discrepancy with the date on the AT5 and the lease. The AT5 was dated 23rd November 2017. The lease was signed by the Respondent and the witness on 23rd November 2016 but by the former landlord on 23rd November 2017. Mr Gibb could not speculate to why that was other than an error. The Tribunal agreed given that it was the former landlord who dated the AT5 and who used the same erroneous date on the lease it appeared to be an error and did not invalidate the AT5 preventing it from being an Short Assured Tenancy.
8. Mr Gibb clarified that the Applicant bought the whole of M & A Dundee Limited’s property portfolio on 20th March 2020.
9. Mr Gibb told the Tribunal that the Respondent had given her 28 day notice on 28th March 2022 stating that she has found an alternative property. He still wished to have the Order granted as the Respondent could change her mind about vacating the Property. The Applicant is seeking to have the Property returned as essential health and safety maintenance has not been able to be undertaken such as EICR checks. The Respondent has not let maintenance into the Property. She did let a maintenance worker in on or around 5th April 2021 but he vacated the Property quickly for his own health and safety as he

was not able to access the whole property due to the condition of the Property. The letting agents have been trying to gain access since for an inspection but the Respondent has refused this or cancelled on each occasion.

10. Mr Gibb confirmed that there were no specific adaptations made to the Property for the Respondent for any health conditions or disabilities.

Findings in Fact

11. The parties entered into a Short Assured Tenancy on 23rd November 2016 for a 12 months period until 22nd November 2017. An AT5 was signed by both parties on the same date as the lease. This was erroneously dated 23rd November 2017.
12. The Applicant served a section 33 notice and a Notice to Quit upon the Respondent. Both were served appropriately.
13. There are no issues of reasonableness.
14. The Respondent submitted her 28 day notice to quit the Property on 28th March 2022 but has not yet vacated the Property.
15. The Housing and Property Chamber received an Application on 24th November 2021.

Reasons for Decision

16. The Tribunal was satisfied that there were no other issues of reasonableness before them and that the notices had been served in an appropriate manner and that a Short Assured Tenancy had been entered into by the parties. Given this the Tribunal was satisfied all appropriate paperwork had been served. The Order for repossession was granted.

Decision

17. The Applicant is entitled to an Order of for recovery of possession.

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.

G Miller

4th April 2022

Legal Member/Chair

Date