



**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/18/1199

Re: Property at 39 Clepington Street, Flat 1, Dundee, DD3 7PS (“the Property”)

Parties:

Mr Mahomed Shabir Gani, 43D Abercorn Street, Dundee, DD4 7FA (“the Applicant”)

Mr James Wallace, 39 Clepington Street, Flat 1, Dundee, DD3 7PS (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. By application dated 15 May 2018 the Applicant applied to the Tribunal for an order under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the Rules”) for possession of the property and eviction of the Respondent.
2. In support of the Application the Applicant provided copies of the Tenancy agreement between the parties, Form AT5, Section 33 Notice, Notice to Quit, Sheriff Officers Execution of Service, Section 11 Form and email to local authority.
3. By Notice of Acceptance dated 29 May 2018 a legal member with delegated powers accepted the application and a Case Management Discussion was assigned to take place on 20 August 2018.

4. Intimation of the Case Management Discussion was given to the Respondent by Sheriff Officers on 20 July 2018.
5. The Respondent had until 8 August 2018 to lodge written representations with the Tribunal. No written representations were received.

Case Management Discussion

6. The Case Management Discussion was held on 20 August 2018 at Dundee Carers Centre, Seagate House, 132-134 Seagate Dundee. The Respondent was represented by Ms Kirsty Morrison of T C Young Solicitors, Glasgow. There was no appearance by the Respondent.
7. For the Applicant Ms Morrison submitted that there had been a valid Short Assured Tenancy agreement between the parties that had terminated on 28 April 2018 following service by Sheriff Officers of a valid Notice to Quit on 15 November 2017. The Applicant had complied with the statutory requirements and was entitled to the order sought.
8. In response to a query from the Tribunal as to whether the Form AT5 had been served on the Respondent prior to the commencement of the tenancy Ms Morrison pointed out that whilst both the tenancy agreement and the AT5 were dated 28/10/16 and only the AT5 had the time of signing endorsed on it the Respondent had declared that the AT5 was issued to him in advance of signing the tenancy agreement. There was therefore in Ms Morrison's submission a valid Short Assured Tenancy.
9. According to Ms Morrison, so far as she was aware the Respondent continued to reside in the property. She did not know if he was continuing to pay rent or not.
10. According to Ms Morrison the lease had continued for 6 months at a time by way of tacit relocation until the notice to quit brought the lease to an end on 28 April 2018 and the Applicant was therefore entitled to an order for possession and eviction of the Respondent.

Findings in Fact

11. There was a Short Assured Tenancy between the parties that commenced on 28 October 2016 and continued until 28 April 2017 and then continued by tacit relocation thereafter for periods of six months until it was terminated by the Applicant on 28 April 2018.
12. A valid Notice to Quit and Section 33 Notice was served on the Respondent by Sheriff Officers on 15 November 2017.

13. The Respondent remained in occupation of the property after the Notice to Quit had expired.
14. Intimation of the Applicant's application was given to the Local Authority by way of a Section 11 Notice on 15 May 2018.
15. The Applicant is entitled to the order sought.

Reasons for Decision

16. The Applicant provided satisfactory evidence that there had been a Short Assured Tenancy in place that had been terminated by the Applicant following service of a Notice to Quit by Sheriff Officers.
17. It appeared to the Tribunal that the Respondent had remained in the property after the Notice to Quit had expired without reason to do so. The Respondent had been given the opportunity to make representation to the Tribunal either in writing or by attending the Case Management Discussion and had chosen not to do so. In any event it did not appear to the Tribunal that there was any valid defence and the Applicant was therefore entitled to the order sought.

Decision

18. The Tribunal found the Applicant entitled to an order against the Respondent for possession of the property.

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.

Graham Harding

Legal Member/Chair

Date

20 August 2018