

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

Chamber Ref: FTS/HPC/EV/18/0641

Re: Property at Laurenston, Westown, PH2 7SU ("the Property")

Parties:

Mr Derek McLeod, C/O 45 King Street, Perth, PH2 8JB ("the Applicant")

Mr Dean Thomson, Laurenston, Westown, PH2 7SU ("the Respondent")

Tribunal Members:

Graham Harding (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Applicant was entitled to an order against the Respondent for possession of the Property.

Background

1. By Application dated 12/03/2018 the Applicant applied to the Tribunal for an order under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. Along with the application the Applicant provided copies of the Tenancy Agreement, Form AT5, Notice to Quit with Certificate of Execution, Section 33 Notice and Notice to Local Authority.
3. By Notice of Acceptance dated 22/05/2018 a legal member of the Tribunal with delegated powers accepted the application for determination by the Tribunal.
4. A Case Management Discussion was assigned to take place on 10 August 2018 at Inveralmond Business Centre, Auld Bond Road, Perth. The

Respondent was invited to lodge any written representations with the Tribunal by 30 July 2018.

5. The Respondent did lodge written representations by undated letter received after 30 July.

Case Management Discussion

6. The Case Management Discussion took place on 10 August 2018. It was attended by Ms Ashleigh McIntosh of Premier Properties Perth, 45 King Street, Perth the Applicant's representatives, Mrs Ashleigh Falconer, solicitor on behalf of the Applicant and his representatives and by the Respondent.
7. For the Applicant Mrs Falconer submitted that the Notice to Quit and Section 33 Notice had been properly served on the Respondent and that being the case and there being no timeous representations from the Respondent the order sought should be granted.
8. The Tribunal queried whether the Short Assured Tenancy had been properly constituted as it appeared that both the Form AT5 and the Tenancy Agreement had been signed by the Respondent contemporaneously. The Respondent could not recall whether he had received and acknowledged receipt of the Form AT5 prior to signing the Tenancy Agreement. For the Applicant, Mrs Falconer pointed out that the Respondent had acknowledged on the AT5 that he had received it in advance of signing the Tenancy Agreement. The Respondent, for his part agreed that there was a Short Assured Tenancy that had been in place for a period of six months and had then continued from month to month thereafter.
9. The Respondent said that he had no knowledge of the Notice to Quit being served by Sheriff Officers. He had never met any Sheriff Officers. No Notice to Quit had been given to him by Sheriff Officers.
10. Mrs Falconer referred to the Sheriff Officers' Execution of Service lodged with the Application and pointed out that service had been effected by affixing the notice to the door of the property as there was no letterbox and by sending a further copy addressed to the Respondent by ordinary first class post.
11. The Respondent advised the Tribunal that he and his wife had separated shortly before Christmas 2017 which would have been about the time the Notice to Quit would have been served. He had moved out of the property around this time but thought his wife would have told him if she had received the Notice to Quit although they had not been on speaking terms at that time. The Respondent went on to say that his wife had moved out of the property and was now living in the Dunfermline area and he had returned to the property. The Respondent was unable to say that the Notice to Quit had not been properly served only that he had not been aware of it being served by Sheriff Officers until the Application to the Tribunal was made.

12. For the Applicant, Mrs Falconer submitted that given the Notice to Quit had been properly served and the Respondent was unable to say that it had not the order sought should still be granted.
13. The Respondent sought to argue that he was entitled to remain in the property until the Applicant dealt with the complaints he had made about the condition of the property during the period of the tenancy and dealt with his claim for damages.
14. The Tribunal explained to the Respondent that if he had a claim for damages then this was a matter he should take up with his solicitor who could advise him how to proceed with such a claim. It was not a matter that would form part of the issues in the current case. The Tribunal had to decide if there was a Short Assured Tenancy and if there was had it come to an end by service of the appropriate notices. If it had then the Applicant was entitled to the order sought.

Findings in Fact

15. The parties entered into a short assured tenancy commencing on 28/01/2016 for a period of six months ending on 29/07/2016. The tenancy continued thereafter on a month to month basis until terminated by either the tenant giving one month or the landlord giving two months written notice.
16. A Notice to Quit was properly served on the Respondent by Sheriff Officers on 20 December 2017. The notice provided for the tenancy to end on 1 March 2018.
17. The Respondent and his wife separated shortly before Christmas 2017. Following the separation the Respondent's wife continued to occupy the property for some time before moving out and the Respondent returned to the property.
18. The short assured tenancy between the parties ended on 1 March 2018.
19. The Applicant is entitled to the order sought.

Reasons for Decision

20. Although there may have been a question as to whether or not the Form AT5 had been provided to the Respondent before he signed the Tenancy agreement the Respondent had no recollection and accepted that there was a short assured tenancy in place.
21. Although the Respondent claimed to have left the property around the time that the Sheriff Officers served the Notice to Quit by fixing it to the door of the

property that in itself would not invalidate service. There was an admission by the Respondent that at the very least his wife was living in the property and the Respondent was unable to give a precise date on which he left the property. The Tribunal was therefore satisfied that service of the notice to quit was properly effected by the Sheriff Officers on 20 December.

22. The Respondents submissions with regards to any claims he may have had for damages for breach of contract on the part of the Applicant were not relevant to the issues to be determined in respect of the current application.

Decision

23. The short assured tenancy between the parties having been terminated on 1 March 2018 the Applicant is 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

10/08/2018