



**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/19/2509**

**Re: Property at 18 Spence Street, Bonnybridge, FK4 1NH (“the Property”)**

**Parties:**

**Northwood (Central Lowlands) Ltd, 9-11 Bank Street, Falkirk, FK1 1NB (“the Applicant”)**

**Miss Lindsey Campbell, Mr Mark Taylor, 18 Spence Street, Bonnybridge, FK4 1NH (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the property at 18 Spence Street, Bonnybridge FK4 1NH should be granted.**

**Background**

1. By application dated 7 August 2019 the Applicant’s representatives Bannatyne Kirkwood France & Co applied to the Tribunal for an order for possession of the property. They submitted a copy of the head lease between the owners and the Applicant, a copy short assured tenancy agreement between the parties, copy AT5, Copy Notices to Quit and Section 33 Notices with proof of posting and copy section 11 notice and email to local authority in support of the application.
2. By Notice of Acceptance dated 22 August 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management Discussion was given to the parties and the Respondents submitted written representations on 25 September 2019. The Applicant's representatives submitted further written representations on 7 October 2019.

#### The Case Management Discussion

4. A Case Management Discussion was held at Wallace House, Stirling on 11 October 2019. It was attended by Ms Anne Johnstone and Mr Jim McHugh on behalf of the Applicant, represented by Ms Kirstie Donnelly of Bannatyne Kirkwood France & Co. Mr Mark Taylor was also in attendance on behalf of the Respondents.
5. The parties confirmed that the facts as narrated in the paper apart attached to the application were correct although the Respondents disputed the validity of the Notices to Quit and the Section 33 Notices.. Ms Johnstone pointed out that the owners of the property were mother and son and not husband and wife. It was confirmed that the parties entered into a Short Assured Tenancy Agreement dated 26 July 2013 whereby the lease would commence on 27 July 2013 and endure for a period of six months. It was agreed that the Respondent had been given a form AT5 prior to the commencement of the tenancy. It was confirmed that that the agreement included 27 July as the first day of the lease. The parties agreed that after the initial six months the tenancy then continued on a two monthly basis until terminated by either party giving no less than two months' notice in writing.
6. It was agreed between the parties that the Applicant sent Notices to Quit and Section 33 Notices to the Respondents by recorded delivery post on 7 May 2019 and that these had been received by the Respondents.
7. It was agreed that the Applicant's representatives had intimated a Section 11 Notice to Falkirk Council at the commencement of the proceedings.
8. The submission on the part of Ms Donnelly was that the notices were valid and that the terms of Section 33 of the Housing (Scotland) Act 1988 had been met and the Applicant was entitled to the order sought.
9. The Respondent's position was that the ish date was the 27<sup>th</sup> of the month not the 26<sup>th</sup> and therefore the Notices to Quit and Section 33 Notices served on him and Mrs Campbell were invalid and therefore the order should be refused.
10. Ms Donnelly referred the Tribunal to the authorities contained in her written submissions namely Pretsel and Dunbar v Norton (FTS/HPC/EV/18/0189), McCabe v Wilson (2006 Hous. LR 86) and Calmac Developments Limited v Murdoch (2012 WL 3062547). The important point was that the tenancy was for six months and the start date of 27 July 2013 was included it therefore followed that the end date was 26 January 2014. The tenancy then continued on a rolling two month basis commencing on the 27<sup>th</sup> of the month and ending on the 26<sup>th</sup>.

11. In response to a query from the Tribunal regarding the correspondence to the Respondents from the Applicant dated 13 November 2013 in which it appeared to suggest that the end date was 27 January 2014 Ms Johnstone advised the Tribunal that this had been generated by the Applicant's computer system which was geared for English tenancies and had been an error. With regards to the email to the Respondents of 29 October 2018 Ms Johnstone said that this did not indicate that the end date was the 27<sup>th</sup> of the month but that the tenancy was continuing on a rolling two month period until terminated.
12. The Respondent's position was that whilst he accepted there was a short assured tenancy in place and that ultimately he would have to vacate the property he had been advised by the Council that the Notices to Quit were not valid as the termination date was wrong and therefore the order should not be granted. The Letter of 13 November 2013 and the email of 29 October 2018 confirmed that the termination date should be the 27<sup>th</sup>. He also pointed out that the tenancy agreement provided that the keys to the property had to be handed back at 12 noon on the last day of the tenancy and not at midnight so was being terminated early if it was on the 26<sup>th</sup> of the month. He recalled that he had received the keys to the property sometime in the morning of the 27<sup>th</sup> of July 2013.
13. For the Applicant Ms Donnelly submitted that it did not matter that the keys had to be returned on the last day of the tenancy at 12 noon. That was simply another contractual term and had no bearing on the calculation of the ish.

#### Findings in Fact

14. The parties entered into a Short Assured Tenancy Agreement dated 26 July 2013.
15. The Tenancy commenced on 27 July 2013 and included that date and endured for an initial period of six months.
16. The tenancy would have ended at midnight on 26 January 2014 but continued on a rolling two monthly basis thereafter.
17. The Applicant served Notices to Quit and Section 33 Notices on the Respondents by recorded delivery post on 7 May 2019
18. The tenancy ended on 26 July 2019.

#### Reasons for Decision

19. The Tribunal was satisfied that although the tenancy agreement did not specify that the ish date was 26 January 2014, by stating that the 27 July was included and that the tenancy was a Short Assured tenancy with a duration of six months it followed that it must have commenced at one second past midnight on 27 July 2013 and would have ended at midnight on 26 January

2014 had it not then continued on a two month rolling basis. It therefore followed that the ish date would be the 26<sup>th</sup> of any month and not the 27<sup>th</sup>. The tribunal was satisfied that the usual method of calculation using *civilis computatio* in which the first day is excluded and the last day included does not apply as the agreement specifies the first day is included and the duration is a period of six months. If the ish date was to be the 27<sup>th</sup> of the month then the duration of the tenancy would have been six months and one day.

20. The Tribunal acknowledged that there would have been confusion in the minds of the Respondents as a result of the communications from the applicant dated 13 November 2013 and 29 October 2018 but these would not alter the terms of the tenancy agreement.

21. Applying the ratio in the case of *Mc Cabe v Wilson* the Tribunal was satisfied that the Applicant had sent valid notices to quit and Section 33 Notices and had therefore satisfied the requirements of Section 33. Intimation of the proceedings had been given to Falkirk Council. As the Notices were valid the Tribunal has no discretion and is obliged in terms of the 1988 Act to make the order sought.

Decision

22. The Tribunal finds the Applicant entitled to an order for possession of the property and the ejection of the Respondents from 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

11/10/2019

Date