



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 (“the 1988 Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/19/2421

Re: Property at 14 Polton Court, Bonnyrigg, EH19 3HF
 (“the Property”)

Parties:

Mr John Pennycuick and Mrs Evelyn Pennycuick, 13 Quarryfoot Green,
Bonnyrigg, EH19 2EJ
 (“the Applicants”)

Saltouns Letting, 61A Queen Street, Edinburgh, EH2 4NA
 (“the Applicants’ Representative”)

Miss Natasha Hardman, 14 Polton Court, Bonnyrigg, EH19 3HF
 (“the Respondent”)

Tribunal Members:

Susanne L M Tanner Q.C. (Legal Member)

Decision (in absence of Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) (i) was satisfied in terms of Section 33 of the 1988 Act that the short assured tenancy for the Property has reached its end; tacit relocation is not operating; no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and the Applicants have given to the Respondents two months’ notice stating that they require possession of the house; and (ii) made an order for possession in terms of Section 33 of the 1988 Act.

Statement of Reasons

1. The Applicants' Representative made an application to the tribunal on 2 August 2019 in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicants seek the Respondent's eviction from the Property under Section 33 of the 1988 Act (possession on termination of a short assured tenancy).
3. The Applicant lodged:
 - 3.1. a copy of the AT5 notice signed and dated 1 November 2014;
 - 3.2. a copy of the short assured tenancy agreement between the Applicants and the Respondent signed and dated 1 November 2014;
 - 3.3. Copies of the notice to the Respondent under Section 33(1)(d) of the 1988 Act, dated 8 May 2019, notifying the Respondent that the Applicant required possession of the Property as at 1 August 2019;
 - 3.4. Copies of the Notice to Quit dated 8 May 2019, notifying the Respondent that she was required to remove from the Property with effect from 1 August 2019;
 - 3.5. Sheriff Officer's Certificate of service of the Notice to Quit and Section 33 Notice dated 14 May 2019; and
 - 3.6. a copy of the Section 11 Notice which was sent to the local authority.
4. On 5 August 2019 the tribunal's administration obtained the title sheet for the Property (MID4739) which shows the Applicants as joint registered proprietors since 28 August 2007.
5. On 13 August 2019, the Application was accepted for determination and a Case Management Discussion ("CMD") was thereafter fixed for 2 October 2019 at 1400 in George House, 126 George Street, Edinburgh, EH2 4HH. By letter dated 22 August 2019 parties were notified by letter of the date, time and place of the CMD and told that they were required to attend. Parties were also advised in the same letter that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the Application, which may involve making or refusing an eviction order. If parties do not attend the CMD this will 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 the procedure has been fair. The

Respondent was afforded the opportunity to return written representations to the tribunal's offices by 11 September 2019. Service on the Respondent of the Application paperwork and notification of the date, time and place of the CMD was effected by Sheriff Officers on 26 August 2019.

6. The Respondent did not submit any written representations or make any contact with the tribunal's administration following service of the documentation.

7. Case Management Discussion ("CMD"): 2 October 2019 at 1400 at George House, 126 George Street, Edinburgh, EH2 4HH

7.1. Mr Dobbie from the Applicants' Representative attended on behalf of the Applicants.

7.2. The Respondent did not appear or make any contact with the tribunal's administration. The tribunal has a certificate of service on the Respondent of notification of the date, time and place of the CMD and the Application paperwork on 26 August 2019. The tribunal was satisfied that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the parties present and all the material before it, in terms of Rule 29 of the 2017 Rules.

7.3. Mr Dobbie advised that he had received an email from the Respondent stating that she could not attend today due to work commitments but that she was content for the proceedings to go ahead and for her to be notified of the outcome. Mr Dobbie showed the email to the tribunal chair. He stated that the Respondent had advised him that wished to be evicted in order that she could approach the Council as a homeless person.

7.4. The tribunal chair indicated to Mr Dobbie that because the tribunal was proceeding in the absence of the Respondent there was the possibility of the Respondent applying for recall of any decision of the tribunal because the tribunal made the decision in absence because that party did not take part in proceedings, failed to appear or be represented at a hearing, in terms of Rule 30 of the 2017 Rules; and that any such Application would have to be in writing, in time and state why it was in the interests of justice for the decision to be recalled.

7.5. Oral Submissions on behalf of the Applicants

7.5.1. Mr Dobbie referred to the Application and the documents lodged with the Application.

7.5.2. The Applicants served an AT5 Notice on the Respondent on 1 November 2014, prior to the creation of the Short Assured Tenancy. The Short Assured Tenancy agreement was signed by all parties on 1 November 2014. Mr Dobbie confirmed that the AT5 Notice was signed by the Respondent at the Property before the lease was signed.

7.5.3. The tenancy agreement provides that the date of entry to the Property was 1 November 2014 and the original date of termination was specified as 1 May 2015. Paragraph 1.1 provides that *"if this agreement is not brought to an end by either party on the end date it will continue thereafter on a monthly basis until terminated by either party giving no less than two months' notice, in writing, to the other party."*

7.5.4. Paragraph 20 provides that the ways in which the short assured tenancy can be ended, include: *"20.1 The tenancy reaching its end date and the landlord giving two months' prior written notice that possession of the house is required in terms of section 33 of the Housing (Scotland) Act 1988 at that end date";* and *"20.2 By the landlord serving on the tenant a Notice to Quit, ... to terminate the tenancy at its end date... ."*

7.5.5. It was submitted on behalf of the Applicants that the tenancy had reached its end on 1 August 2019 as it had continued by tacit relocation on a month to month basis, until terminated with the service of a valid notice to quit and Section 33 notice dated 8 May 2019 (and served on 14 May 2019), notifying the Respondent that the Applicants required vacant possession of the Property as at 1 August 2019 and that the Respondent was required to remove from the property on or before 1 August 2019. Said notices were served at least two months before possession of the house was required. The Application to the tribunal was made within the period of 6 months from the date of service of the notice.

7.5.6. The section 11 Notice was emailed to the Council.

8. The tribunal makes the following findings-in-fact:

8.1. There was a short assured tenancy between the parties for the initial period 1 November 2014 to 1 May 2015.

8.2. Thereafter the tenancy continued by tacit relocation on a monthly basis.

8.3. The short assured tenancy reached its end on 1 August 2019 by service on behalf of the Applicants on the Respondent, on 14 May 2019, of a Notice to Quit dated 8 May 2019, notifying the Respondent that the tenancy would reach its termination date as at 1 August 2019.

8.4. Tacit relocation is no longer operating.

8.5. No further contractual tenancy is for the time being in existence.

8.6. A Section 33 notice was served on behalf of the Applicants on the Respondent on 14 May 2019, notifying the Respondent that the Applicants required vacant possession as at 1 August 2019.

8.7. The Applicants have given to the Respondent at least two months' notice stating that they require possession of the Property.

8.8. The Application to the tribunal was made on 2 August 2019, which is within the period of 6 months from the date of service of the notices.

9. Findings in Fact and Law

9.1. The tribunal is satisfied that the requirements of Section 33 of the 1988 Act are met and therefore must make an order 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.

Susanne Tanner

2 October 2019

Susanne L M Tanner Q.C.
Legal Member/Chair