



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/23/3101

Re: Property at 31/1 Pilton Drive North, Edinburgh, EH5 1NF (“the Property”)

Parties:

Mr Stephen Forrest, Ms Sharon Forrest, 23 Craighdimas Grove, Dalgety Bridge, Fife, KY11 9XR (“the Applicants”)

Mr Peter Thomas Cummings, 31/1 Pilton Drive North, Edinburgh, EH5 1NF (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This was an application dated 1st September 2023 and brought in terms of Rule 66 (Application for order for possession upon termination of a short assured tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicants provided with their application copies of a short assured tenancy agreement, form AT5, notice to quit, section 33 notice, Section 11 notice, and relevant proofs of service.

All of these documents and forms excepting the notice to quit had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 26th January 2024, and the Tribunal was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held at 14:00 on 13th March 2024 by Tele-Conference. The Applicants participated and were not represented. The Respondent did not participate, nor did his representative, Granton Information Centre, which indicated it had no-one available in response to the Tribunal clerk making contact with it. The Respondent had not responded to this application at any stage either in writing or by any other form of communication excepting receipt of a mandate from his representative.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal was invited by the Applicants with reference to the application and papers to grant the order sought. They wish to sell the Property.

The notice to quit provided that the tenant required to leave the Property by 28th August 2023. The Tribunal drew the Applicants' attention to the fact that this date is not an *ish* date of the lease, as it is required to be in order to constitute an effective notice.

The end date in the written short assured tenancy agreement was specified in clause 3 to be 24th December 2010 and the lease would continue thereafter on a monthly basis until ended by either party. As the lease was not brought to an end on 24th December 2010, it continued on a monthly basis.

That being so, the *ish* of the lease falls on the 24th day of each month after 24th December 2010, and the notice to quit and vacate the Property by 28th August 2023 (which is not an *ish* date) is ineffectual.

Statement of Reasons

In terms of Section 33 of the *Housing (Scotland) Act 1988* as amended, the Tribunal may make an order for possession of the house let on the tenancy if:

- (1) the short assured tenancy has reached its *ish*;
- (2) tacit relocation is not operating;
- (3) the landlord has given to the tenant notice stating that he requires possession of the house; and
- (4) it is reasonable to make an order for possession.

In order to terminate the lease, the landlord must serve a valid notice to quit in the correct form and which specifies an *ish* of the lease. The date specified of 28th August 2023 was not an *ish* of the lease (see *Rennie & Ors. – Leases S.U.L.I. (1st Ed.)* paragraphs 35-25 and 35-26, *Stalker – Evictions in Scotland (2nd Ed.)* pages 58-60, and section 38 of the *Sheriff Courts (Scotland) Act 1907*).

In this case, the notice to quit is in the correct form, but specifies a date which is not an *ish* of the lease. As a result, the notice is invalid and ineffectual. Similarly, the section 33 notice is also invalid and ineffectual as the tenancy has not reached its *ish* in consequence of the absence of a valid notice to quit.

The tenancy has not been validly terminated by the Applicants. The Tribunal must dismiss this application, as it has no discretion to excuse or remedy the invalidity of the notice to quit and section 33 notice.

Decision

In these circumstances, the Tribunal dismissed the application.

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.

13th March 2024

Legal Member/Chair

Date