



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 (“1988 Act”)

Chamber Ref: FTS/HPC/EV/24/0347

Re: 26 McMahon Grove, Bellshill, ML4 1RL
 (“the Property”)

Parties:

Mr Craig Laurie Taylor, 1 Haltons Path, Uddingston, Glasgow, G71 7JG
 (“the Applicant”)

Mr Stanislaw Igel, 26 McMahon Grove, Bellshill, ML4 1RL
 (“the Respondent”)

Tribunal Members:

Pamela Woodman (Legal Member) and Jane Heppenstall (Ordinary Member)

Present:

The case management discussion took place at 2pm on Friday 24 May 2024 by teleconference call (“the CMD”). The Applicant was present at the CMD. The Respondent was not present at the CMD. The clerk to the Tribunal was Michael Cowie.

Decision (in absence of the Respondent)

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

BACKGROUND

1. An application was made to the Tribunal under section 33 of the 1988 Act. The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 66 (*Application for order for possession upon termination of a short assured tenancy*) of the HPC Rules.

2. The order sought was an order for possession of the Property.
3. The application was dated 18 January 2024. Copies of various documents were provided by or on behalf of the Applicant, including:
 - a. Tenancy agreement between the Applicant and the Respondent in respect of the Property dated 15 March 2017 (“**Tenancy Agreement**”), which stated that:
 - i. it was a short assured tenancy;
 - ii. the date of entry was 15 March 2017;
 - iii. the expiry date of the initial term was 14 September 2017, being the date which was 6 months after the date of entry; and
 - iv. following completion of the initial term (and so with effect from 15 September 2017), it would continue “on a monthly basis until ended by either party”;
 - b. Notice to quit addressed to the Respondent, given on behalf of the Applicant, dated 22 August 2023 and noting that the Respondents were being given formal notice to quit the Property by 15 November 2023 (“**Notice to Quit**”), with evidence of service on 22 August 2023 by sheriff officer;
 - c. Section 33(1)(d) notice addressed to the Respondent, given on behalf of the Applicant, dated 21 August 2023 notifying the Respondent that the Applicant, as landlord of the Property, “require[d] possession of the property at 26 McMahon Grove, Bellshill, ML4 1RL leased to [the Respondent] in terms of a short assured tenancy which commenced on 15/03/2017” and requiring “vacant possession as at 15/11/2023” (“**Section 33 Notice**”), with evidence of service on 22 August 2023 by sheriff officer;
 - d. Section 11 notice to North Lanarkshire Council, with evidence of service on 18 January 2024 by sheriff officer.
4. A notice of acceptance of the application was issued by the Tribunal dated 20 February 2024 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal on 22 January 2024.
5. The Tribunal Members had received a copy of the certificate of intimation from Walker Love (sheriff officers) which confirmed that the letter with enclosures from the Tribunal notifying the Respondent of the date and time of the CMD had been served on the Respondent personally on 19 April 2024.
6. The Respondent had provided written submissions by e-mail dated 7 May 2024, which included what appeared to be a hospital referral letter in relation to a medical condition he referred to in his submissions.

7. The Tribunal noted that the Applicant is the registered proprietor of the Property (title number LAN141789) and the registered landlord of the Property.
8. This decision arises out of the CMD.

PRELIMINARY ISSUES AND REASONS

Form AT5 under section 32(2) of the 1988 Act

9. The application was made under rule 66 of the HPC Rules which relates to short assured tenancies. A short assured tenancy is a specific form of assured tenancy which must meet two criteria.
10. Section 32(1) of the 1988 Act sets out those criteria as follows:

“A short assured tenancy is an assured tenancy—

 - (a) which is for a term of not less than six months; and
 - (b) in respect of which a notice is served as mentioned in subsection (2) below.”
11. The form of notice referred to in section 32(2) is known as a Form AT5 and it must be “served before the creation of the assured tenancy”.
12. The Applicant had not provided a Form AT5 with the application paperwork but confirmed during the CMD that he could look in his records for this.
13. In order for an application to succeed in terms of section 33 of the 1988 Act, the Tribunal would require to be satisfied that the tenancy in question was a short assured tenancy. Based on the information available to it as at the time of the CMD, the Tribunal was not so satisfied but, in order to try to satisfy the Tribunal of this, the Tribunal could have given the Applicant time in which to produce evidence that the notice required in terms of section 32(2) of the 1988 Act had been served on the Respondent before the tenancy was created.
14. However, it was not consistent with the overriding objective to do so because there was a fatal flaw in the Notice to Quit.

Ish date in Notice to Quit

15. The Tribunal had accepted that the initial term of the tenancy was for a period of six months from (and including) 15 March 2017 to (and including) 14 September 2017 and so each successive term of a month thereafter would start on the 15th of the month and end on the 14th of the month following. Therefore, any possible “ish” date required to be the 14th of a month.
16. The Notice to Quit sought to bring the tenancy to an end on 15 November 2023 which was not an “ish” date.
17. Therefore, the Notice to Quit was not valid or effective.

DECISION

18. The Tribunal refused the application for an order for possession made under case reference HPC/FTS/EV/24/0347.
19. Nothing in this decision prevents the Applicant from making a new application to the Tribunal to seek an order for possession under sections 18 or 33 of the 1988 Act.

Right of Appeal

In terms of Section 46 of the Tribunals (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.



24 May 2024

Legal Member (chair)

Date