



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

Chamber Ref: FTS/HPC/EV/23/4299

Re: Property at 3B Fleming Gardens, Dundee, DD3 7NE (“the Property”)

Parties:

Mr Victor Bennett, 29 Bruce Road, Dundee, DD3 8LJ (“the Applicant”)

Miss Elizabeth George, 3B Fleming Gardens, Dundee, DD3 7NE (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to refuse the Application for an order for possession of the Property.

Background

- 1. The tribunal convened a second case management discussion on 22nd July 2024 to consider the application for an order of eviction under Section 33 of the Housing (Scotland) Act 1988 (“the Act”).**
- 2. On the 15th of April 2024. at the first case management discussion, the tribunal had issued directions to the Applicant in which he was required to lodge written submissions which:**
 - a. Outlined why he considered he believed he had the title and authority to raise the application and**
 - b. Outline why he believed it was reasonable to grant an order for possession.**

3. The Applicant complied with the directions of the tribunal and lodged with the tribunal a written submission in which he answered those directions. A copy of those submissions were made available to the Respondent.

Second Case Management Discussion held on 22nd July 2024

4. The Tribunal convened a second Case Management Discussion (“CMD”) on 22nd July 2024.
5. The CMD was held by conference call.
6. The Applicant was represented on the conference call by his solicitor, Mr Sam Morton of Messrs Lindsays, solicitors. The Respondent also joined the conference call.
7. At this hearing the tribunal had before it:
 - a. The Application (including supporting documentation) which sought the order under Section 33 of the Act, including
 - b. The written submission made on behalf of the Applicant in advance of the case management discussion on the 15th of April 2024.
 - c. The written submission made on behalf of the Applicant in answer to the tribunal’s directions dated 15th of April 2024.
 - d. A further written submission made on behalf of the Applicant in advance of the case management discussion of 21st of July 2024.
 - e. Email of written submissions made by the Respondent dated 15th of March 2024 together with copy of notices and tenancy agreements
 - f. Further written submissions made by the Respondent by email dated 16th of July 2024.

Findings in fact as established at the CMD

8. The tribunal found the following uncontested facts from the Case Management discussion. These facts were not disputed by either party.
 - a. The parties first entered into a tenancy agreement in relation to the Property in terms of a tenancy agreement dated 23rd July 2011 (hereinafter referred to as the 2011 tenancy).
 - b. The 2011 tenancy was a short assured tenancy.
 - c. The 2011 tenancy commenced on the 1st August 2011 and stated that the date of termination was the 31st January 2012.
 - d. Paragraph 2 of the terms and conditions of the 2011 tenancy stated that if the lease was not terminated by the termination date, then..... “the lease will continue on a month-to-month basis until terminated”.
 - e. The end of the 2011 tenancy was the 31st January 2012 and it continued by operation of tacit relocation until the 31st of each month thereafter until such time as the lease was terminated.

- f. In 2015 the parties entered into a further written tenancy agreement (hereinafter referred to as the 2015 tenancy).
- g. In terms of the 2015 tenancy the period of lease was from the 25th February 2015 to 25th July 2015.
- h. The 2015 tenancy was not for a period of less than six months.
- i. The Applicants did not serve a notice to comply with the terms of Section 32 (1)(b) of the Act prior to the commencement of the 2015 tenancy.

Reasons for Decision

9. To grant an order for possession under Section 33 of the Act, the tribunal has to be satisfied that the tenancy between the parties is a short assured tenancy.

10. Section 32 of the Act (as in force as at the date of the commencement of the 2015 tenancy) states:

32.— Short assured tenancies.

(1) 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.

(2) The notice referred to in subsection (1)(b) above is one which—

(a) is in such form as may be prescribed;

(b) is served before the creation of the assured tenancy;

(c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and

(d) states that the assured tenancy to which it relates is to be a short assured tenancy.

(3) Subject to subsection (4) below, if, at the end of a short assured tenancy—

(a) it continues by tacit relocation; or

(b) a new contractual tenancy of the same or substantially the same premises comes into being under which the landlord and the tenant are the same as at that end,

the continued tenancy or, as the case may be, the new contractual tenancy shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.

(4) Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy or, as the case may be, before the beginning of the new tenancy, the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued or new tenancy is not to be a short assured tenancy.

(5) Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.

11. The commencement date of the 2015 tenancy was 25th February 2015.
12. Section 32(1) of the Act requires a short assured tenancy to be for a minimum term of not less than 6 months and in respect of which a notice is served in terms of Section 32 (b) of the Act.
13. However, in terms of Section 32 (3), if, at the ish of a short assured tenancy, a new contractual tenancy of the same property between the same parties comes into being as at that ish, that new contractual tenancy shall be a short assured tenancy, whether it fulfils the conditions of Section 32 (1).
14. The 2015 tenancy was not for a period of less than six months. The Applicants did not serve a notice to comply with the terms of Section 32 (1)(b) of the Act prior to the commencement of the 2015 tenancy.
15. For the 2015 tenancy to be a short assured tenancy the terms of Section 32 (3) of the Act would require to apply.
16. The ish of the 2011 tenancy was the 31st of the month. The new tenancy commenced on the 25th of the month. The 2015 tenancy had not come into being at the ish of the 2011 tenancy.
17. The 2015 tenancy did not fall within the terms of Section 32 (3) the Act.
18. The 2015 tenancy could only be a short assured tenancy if it complied with the full terms of Section 32 (1) of the Act. The 2015 tenancy did not so comply as it was not for a term of not less than 6 months and no notice had been served under Section 32 (b) prior to the creation of that tenancy. The 2015 tenancy therefore, being the current tenancy between the parties, is not a short assured tenancy.
19. At the second CMD the tribunal explained the above reasoning to the Applicant's representative who accepted that the 2015 tenancy was not a short assured tenancy.

Decision

On the basis that the tenancy between the parties is not a short assured tenancy the application made by the landlord is not competent and the tribunal therefore refuse to grant the application made

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.

A. Cowan

23rd July 2024

Legal Member/Chair

Date