

**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/24/1440**

**Re: Property at 142 Castlebay Street, Glasgow, G22 7LR ("the Property")**

**Parties:**

**Sadia Anwar, 190 Kestrel Road,, Glasgow, G13 3PQ ("the Applicant")**

**Lyndsay Tran, 142 Castlebay Street, Glasgow, G22 7LR ("the Respondent")**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision**

At the Case Management Discussion ("CMD"), which took place by telephone conference on 6 November 2024, the Applicant was not in attendance but was represented by Ms Tracey Campbell-Hynd, TCH Law. The Respondent was present.

Prior to the CMD the Tribunal received from the Applicant's representative an email dated 23 October 2024 with attachment.

The CMD was also in respect of the related application bearing reference FTS/HPC/CV/24/1443.

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-**

**Background**

A CMD had previously taken place on 25 June 2024. That CMD was adjourned to allow the Tribunal to be addressed on:-

1. Whether the Form AT5 Notice with the application papers is complete and, if incomplete, whether the missing page or pages can be produced.
2. Whether the Form AT5 Notice as produced is sufficient to create a Short Assured Tenancy as at 24 February 2012 having regard to the terms of the 1988 Act and Regulations thereunder relative to the form and content of prescribed Notices.

3. If a Short Assured Tenancy exists, whether the Section 33 Notice is valid having regard to the removal dated stated therein, namely 20 March 2024.

### **The CMD**

#### *Submissions for the Applicant*

At the outset of the CMD Ms Campbell-Hynd confirmed the Applicant still seeks an eviction order. She made the following submissions relative to the issues outlined above:-

- i. With regard to the Form AT5, steps were still being taken to locate the complete document.
- ii. A number of parties previously involved no longer exist, such as the Letting Agent of the previous owner of the Property which was dissolved in November 2020.
- iii. The Applicant was not advised the tenancy paperwork was incomplete at the point of purchase of the Property. That is a separate matter for her and the legal representative who acted for her in the purchase.
- iv. The Applicant relies on what has been produced, on the basis that the Form AT5 was complete when the tenancy was entered into.
- v. The Tribunal observed that there ought to be a "Note 1" for the recipient tenant on page one of the Form AT5. That Note was not on the page provided with the application. Ms Campbell-Hynd submitted it may have been moved to the second page. She was continuing to investigate the missing pages.
- vi. She submitted that as the Form At5 was prepared by a Letting Agent it would be highly irregular if the document did not comply with the legal requirements. She invited the Tribunal to accept that on the balance of probabilities the Form AT5 did comply. All the least documents were signed on the same day by the same agent.
- vii. Ms Campbell-Hynd sought further time to find the Form At5 and suggested that the application be assigned for a Hearing which would give her time to lodge the Form AT5 in support of the application.
- viii. With regard to the calculation of the notice period in the Section 33 Notice, she submitted that the term of the tenancy was correctly 6 months and one day. A minimum period of notice of 2 months was needed and an extra day had been provided. No reference to caselaw was made.

#### *Submissions by the Respondent*

- i. The Respondent said she did not have any of the lease paperwork.
- ii. She said the original Letting Agent had moved to "Guardian Lettings" and the individual she dealt with had moved there too.
- iii. The respondent was not able to make any submissions on the adequacy of the Form AT5 or the calculation of the notice period relative to the Section 33 Notice.
- iv. She said she had nowhere to go.

The Tribunal adjourned to consider the parties' representations on the adequacy of the Form AT5 as produced and the calculation of the notice period in the Section 33 Notice.

### **The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-**

#### **Reasons for Decision**

The application proceeds under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 which concerns orders for possession of properties let as short assured tenancies. Rule 66 states:-

*"66. Application for order for possession upon termination of a short assured tenancy  
Where a landlord makes an application under section 33 (recovery of possession on termination of a short assured tenancy) of the 1988 Act, the application must—*

*(a) state—*

*(i) the name, address and registration number (if any) of the landlord;*

*(ii) the name, address and profession of any representative of the landlord; and*

*(iii) the name and address of the tenant;*

*(b) be accompanied by a copy of—*

*(i) the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;*

*(ii) the notice by landlord that the tenancy is a short assured tenancy;*

*(iii) the notice given to the tenant under section 33(1)(d) of the 1988 Act;*

*(iv) the notice to quit served by the landlord on the tenant;*

*(v) a copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable); and*

*(vi) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable); and*

*(c) be signed and dated by the landlord or a representative of the landlord."*

The Tribunal therefore requires to be satisfied that the tenancy between the Applicant and the Respondent is a Short Assured Tenancy under and in terms of Section 32 of the Housing (Scotland) Act 1988 as it existed when the tenancy in favour of the Respondent was created.

Section 32 then stated:-

*"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 ish of a short assured tenancy—*

*(a) it continues by tacit relocation;*

*the continued 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, 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 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.”*

If the tenancy is not a Short Assured Tenancy the application falls to be dismissed.

Indeed Rule 66 requires that an application thereunder must be accompanied by “*the notice by landlord that the tenancy is a short assured tenancy*”. This is the Form AT5 referred to herein. The Tribunal considers it to be implied within Rule 66 that the full and complete Form AT5 be produced not only part of it. Only by producing the full and complete document can the Tribunal be satisfied that the notice is sufficient to create a Short Assured Tenancy and complies with the terms of the Assured Tenancies (Forms) (Scotland) Regulations 1988.

Only the first page of the Form AT5 has been produced. That page does not accord with page 1 of the Form AT5 as prescribed in that “Note 1” to the recipient tenant is not present. Ms Campbell-Hynd suggested that the Tribunal accept the Form AT5 would have complied with the necessary requirements on the balance of probabilities having been completed by a Letting Agent. In the alternative she suggested that a Hearing be assigned and efforts to locate the complete Form AT5 could be continue in the interim.

The Tribunal did not accept Ms Campbell-Hynd’s submissions.

Rule 66 has not been complied with as the full and complete Form AT5 had not been produced. The Tribunal could not be satisfied that a Short Assured Tenancy has been properly created.

The Tribunal had already allowed a period of more than 4 months for the complete document to be found and lodged following the CMD on 25 June 2024.

If a Short Assured Tenancy has not been created, the Section 33 Notice is not valid whatever the dates therein may be.

It is for the Applicant to satisfy the Tribunal that a Short Assured Tenancy has been created. That has not been done. Rule 66 has not been complied with. This application cannot proceed further.

**Decision**

The application for an eviction order relative to the Property is refused.

**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.**

**Legal Member/Chair**

**6 November 2024**

**Date**