



**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/19/0361

Re: Property at 24 Mossywood Place, Cumbernauld, G68 9DS (“the Property”)

Parties:

Earls Homes, 47 Main Street, The Village, Cumbernauld, G67 2RT (“the Applicant”)

Miss Sharon McDade, 24 Mossywood Place, Cumbernauld, G68 9DS (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member)

Decision

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

Background

1. By application received on 4th February 2019 the applicant sought an order for eviction on the basis of section 33 of the Housing (Scotland) Act 1988
2. The applicant lodged with the application a lease, Form AT5, Section 33 notice, Notice to Quit, Form AT6, Section 11 notice and proof of service.

The Case Management Discussion

3. The respondent was present at the Case Management Discussion. The applicant was represented by Amrit Pawar from The Cumbernauld Law Practice.
4. The respondent advised the Tribunal that she had resided in the property since 2003. There had been a number of leases pre-dating the lease lodged with the application. She did recall signing a lease in 2011 and it was her

understanding that new leases were signed to extend the period that she could reside in the property.

5. My Pawar advised the Tribunal that he was seeking an order for eviction on the basis of the notices lodged with the application.
6. The Tribunal noted that the lease lodged with the application had a duration from 1st September 2011 to 31st August 2012, both days inclusive. A clause in the lease provided that *"At the sole option of the Landlord the tenancy may be continued for a further fixed term to be offered and accepted in writing between the Landlord and the Tenant. Where the continuance sought is for a period in excess of six months a new tenancy agreement shall be entered into between the Landlord and the Tenant."*
7. Mr Pawar confirmed that there had been no such written agreement. Accordingly the Tribunal determined that the lease was continuing by tacit relocation and the ish date was 31st August in any given year.
8. The Notice to Quit and section 33 notice lodged with the application were served on 10th August 2018 and both purported to take effect on 12th October 2018. This is not an ish date of the tenancy. Accordingly the notices were invalid.
9. Mr Pawar advised that he had previously noticed that the date in the notices was not the ish date of the tenancy.

Findings in Fact

10. The respondent moved into the property in 2003
11. A new lease was signed in 2011. The lease purports to be a Short Assured Tenancy and had an ish date of 31st August 2012.
12. Paragraph 1 of the lease agreement allowed for written agreement between the parties in relation to an extension of the lease period. No such extension was agreed.
13. The lease is continuing by tacit relocation
14. The ish date of the lease is 31st August.
15. The Notice to Quit and Section 33 notices do not coincide with the ish date of the tenancy and are accordingly invalid.

Reasons for Decision

16. The applicants have not complied with the requirements of section 33 of the Housing (Scotland) Act 1988 and in particular have failed to serve a valid Notice to Quit and valid Section 33 notice, accordingly the order sought cannot competently be granted and the application is refused.

Decision

17. The Tribunal determines to refuse 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.

Mary-Claire Kelly

Legal Member/Chair

Date

25th March 2019

*Insert or Delete as required