



Statement of Decision under Rule 39 of the First Tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (Procedure Rules) in relation to an application to review its Decision dated 25 August 2023.

In connection with

Chamber Ref: FTS/HPC/EV/23/1407

Re: Property at 7 Campview Crescent, Danderhall, EH22 1PU (“the Property”)

Parties:

Mr Kevin Hanlon, 5/34 Neill Street, Carlton, Victoria, 3053, Australia (“the Applicant”)

Ms Amy MacPhee, 7 Campview Crescent, Danderhall, EH22 1PU (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application to review the Decision of 25 August 2023 be refused.

Background

- i. On 25 August 2023, the Tribunal refused an application under section 33 of the Act and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (**Regulations**) in respect of the termination of a Short-Assured Tenancy (**SAT**).
- ii. The Tribunal’s Decision was sent to the Parties by letter of 25 August 2023. The Tribunal’s letter informed the Parties of their options if they disagreed with the Decision (Recall, Review and Permission to Appeal).
- iii. By email dated 29 August 2023, received by the Tribunal on that date, the Applicant’s Representative asked the Tribunal to review the Decision.

- iv. The Applicant's Representative sought recall review on the following grounds:
- a. The Respondent, Ms MacPhee, first took occupation of the subjects of let in 2014. Under the letting agents' procedures, it was normal practice to issue a new lease annually to reflect and achieve an annual rent increase.
 - b. The commencement of the tenancy of 4th August 2018, followed on from an existing Short Assured Tenancy which ran for the term 4th August 2017 to 4th February 2018 and continued on a monthly basis thereafter, until terminated by either party. In this case, the agreement was terminated by the issuing of a new SAT. A copy of this agreement is attached. The Tribunal will be aware that when the PRT regime was introduced in December 2017 there were transitional arrangements put in place for existing SAT's which allowed for their continuation, despite the introduction of PRT's under the terms of the 2016 Act.
 - c. Section 6 of The Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 3, Amendment, Saving Provision and Revocation) Regulations 2017: " Saving provision 6. Despite the amendments made by section 75 and paragraphs 1, 2 and 3 of schedule 5 of the 2016 Act, sections 12, 32(1) and 33(2) of the 1988 Act have effect on and after 1st December 2017 as they had effect immediately before that date but only in relation to— (a)a short assured tenancy (within the meaning given in section 32(1) of the 1988 Act) which was created before 1st December 2017 and continues in existence on that date; (b)a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which came into being before 1st December 2017 and continues in existence on that date; and (c)a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which comes into being on or after 1st December 2017 at the ish of a short assured tenancy which is a short assured tenancy in a case mentioned in paragraph (a) or (b)."
 - d. This provision is directly on point with the short assured tenancy agreement in place in this matter. The tenancy agreement which commenced on 4th August 2018 directly followed on from the previous agreement which was already in place in that it "came into being" at the ish of a short assured tenancy, it was an agreement relating to the same premises, and the landlord(s) and tenant remained the same. The tenancy agreement which commenced on 4th August 2018 is a valid one. On this basis, the application for eviction was correctly lodged under Rule 66, and would have to be so again should the current decision of the Tribunal stand. Given the time it will take to make and process a new application, and the uncertainty this would cause for all parties concerned, a review of the decision would be both necessary and in the interests of justice, and request the same, as permitted under section 43 (2) (b) of the Tribunals (Scotland) Act 2014.

- v. The case had originally called for a Case Management Discussion (**CMD**) on 25 August 2023. The Applicant's Representative had conceded that the application was incompetent and explained that a correct tenancy agreement under the 2016 Act would be issued to the Respondent and that the Applicant would proceed to serve a Notice to Leave under that Act. The Applicant wishes to sell the Property.
- vi. The Tribunal dealt with the case on the basis of that concession made and refused the application as incompetent. The only tenancy provided to the Tribunal was the SAT commencing 4 August 2018. The application had been raised under Rule 66 and was clearly incompetent.

Decision and Reasons

The Tribunal carefully considered the position set out in the Applicant's Representative's correspondence.

Rule 39(2) of the Tribunal Procedure Rules provides:

- (2) An application for review under section 43(2)(b) of the Tribunals Act must—
 - (a) be made in writing and copied to the other parties;
 - (b) be made within 14 days of the date on which the decision is made or within 14 days of the date that the written reasons (if any) were sent to the parties; and
 - (c) set out why a review of the decision is necessary.

The Applicant must set out why a review of the Decision is necessary under Rule 39 (2) (c).

In terms of Rule 39(3) the Tribunal must refuse the application if it considers it wholly without merit.

The application for review was made within 14 days as required Rule 39(2) (a).

Whilst the Tribunal agreed that if the SAT had been created prior to 1 December 2017 and was subsisting as at the date of the service of the section 33 Notice and Notice to Quit then the transitional provisions referred to by the Applicant's Representative would have applied. The problem here was that, on the Applicant's Representative's submissions, it was conceded that the SAT created prior to 1 December 2017 had been terminated on 4 August 2018. The SAT relied upon for the eviction application "came into being" following the ish date of the previous tenancy on 4 August 2018. This was not a case of a continuing SAT. It was a case where the Applicant sought to put a new tenancy in place with the Respondent following the termination of the previous SAT.

Given that position the tenancy of 4 August 2018 was an attempt to create a new SAT when it was no longer legally competent to do so. It was not a validly created SAT and the reasons for the Tribunal's Decision of 25 August 2023 stand.

The application for review is refused.

Alan Strain

Legal Member: Alan Strain

Dated: 11 September 2023