



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/19/2847

Re: Property at Flat A, 41A New City Road, Glasgow, G4 9DE (“the Property”)

Parties:

Mr Siu Chung Cho, 59 Dorchester Avenue, Kelvindale, Glasgow, G12 0EH (“the Applicant”)

Miss Victoria Nakamatte, Flat A, 41A New City Road, Glasgow, G4 9DE (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member)

Decision

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

Background

1. By application received on 11 September 2019, the Applicant sought an order under section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) and in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the procedure rules”).
2. On 11 October 2019 the application was accepted by the Tribunal and referred for determination by the Tribunal. A case management discussion was set to take place on 12 November 2019 and appropriate intimation of that hearing was given to both the landlord and the tenant.

The Case Management Discussion

3. The case management discussion ("CMD") took place on 12 November 2019 within the Glasgow Tribunals Centre at York Street, Glasgow. The Applicant attended and was represented by Ms Chloe Minto, solicitor from Mellicks Solicitors in Glasgow. The Respondent was also in attendance but was unrepresented.
4. The Tribunal began by explaining the purpose of the CMD to the parties and the power of the Tribunal to determine matters. In particular the Tribunal explained the overriding objective of the Tribunal to deal with proceedings justly and also explained to parties the power of the Tribunal in terms of rule 17 of the procedure rules which would enable the Tribunal to make a final decision on the matter at the CMD. The Tribunal also explained to the Respondent that the Tribunal would ensure that matters were conducted fairly on the basis that she was not legally represented but the Applicant was legally represented.
5. Various documents had been produced along with the application. These documents appeared to be a short assured tenancy agreement entered into between the parties which was dated 1 September 2017 and which bore to run for a period of 12 months until 30 August 2018. The form AT5 was produced to the Tribunal along with the relevant notices under section 33 of the 1988 Act and the notice to quit. The section 33 notice and notice to quit had been sent by recorded delivery by the Applicant on 30 May 2019 and appropriate evidence was produced from Royal Mail showing that both of these notices had been collected on 5 June 2019 at 2.59pm and that the person who had signed to collect them had signed their name as "Nakamatte". That is the surname of the respondent.
6. The Tribunal began by asking the respondent whether she accepted that the various documents properly represented the tenancy agreement between the parties and that various notices had been served. The respondent responded to that by indicating that if the Tribunal regarded this as being a legal eviction

then she would accept that but that she did not think it was a legal attempt. The Respondent indicated that the landlord had only started action to terminate the tenancy when she had raised a Tribunal application against the landlord. In her representations to the Tribunal, the Respondent had produced a copy of two decisions which she had obtained under other Tribunal references. These cases had been an application in respect of a Repairing Standard claim under reference FTS/HPC/RP/18/3206 and an application in respect of a failure by the landlord to place the tenancy deposit within an approved tenancy deposit scheme under reference FTS/HPC/PR/18/0771. In these cases, the respondent had been successful.

7. The Tribunal indicated to the respondent that these two previous cases were essentially irrelevant to the matter at hand. The Tribunal explained that the action raised by the landlord required to be determined in accordance with the relevant legal provisions.
8. Upon questioning by the Tribunal, the Respondent accepted that she had signed the tenancy agreement. She indicated on the tenancy agreement where she had signed it. The Tribunal explained to parties that if indeed it was a short assured tenancy agreement, then assuming it had been created properly and ended properly, the Tribunal would be bound to grant the eviction order. The Tribunal explained to the Respondent the provisions of sections 32 and 33 of the 1988 Act and in particular explained to the Respondent that in order to create a short assured tenancy the landlord was required to have given to the Respondent the form AT5 prior to the creation of the tenancy. A copy of that form was lodged with the papers and the Respondent indicated that she had not been given that form.
9. The Respondent was then asked to explain how she came to enter the tenancy agreement. She indicated to the Tribunal that she had seen the flat advertised on the Gumtree website, that she had arranged to go and view the property and that after viewing the property she had received a text the next day from the landlord indicating that he was happy to lease the property to her. It was noted that what she was renting was a single room in a flat which

had three bedrooms. The other two bedrooms were occupied by other tenants. She agreed to take the room in the flat at a rent of £340 for 12 months. She was a student who was now taking up a place at a course at Glasgow Caledonian University although she had been in Glasgow for the two years prior to that in other student accommodation.

10. The Respondent indicated that she then attended at the flat and was met by the tenant's mother and that the tenancy agreement was signed. She again claimed that she had not received the AT5.
11. The landlord was then invited to address the Tribunal and did so with the assistance of his representative. The landlord agreed that the flat had been advertised on Gumtree, agreed that his mother had helped him out in allowing the flat to be viewed. The landlord's position was that he had been present when the tenancy agreement was signed and that he had used the pre-printed "Lawpack" standard tenancy agreement and form AT5. He indicated he had bought these in the stationery store. He had completed the various blanks showing the address of the property, his own name, the terms of the property, the rent and the deposit. He had left blank the space for the name of the respondent.
12. The Tribunal then questioned parties with regard to the manner in which the name of the respondent had been inserted onto the tenancy agreement and the form AT5. It seemed clear to the Tribunal that the hand writing which had been used to complete the tenancy in respect of the details of the property, the landlord, the term, the rent and the deposit was different from the hand writing which had been used to insert the name of the respondent. The respondent did not accept that she had written her own name on the tenancy agreement. The Tribunal then also noticed that the respondent's signature had not been witnessed. However in the space underneath where a witness should have signed to witness the respondent's signature, a name and address had been inserted. The respondent accepted that the name and address which had been inserted had been done in her hand writing and it was the name and address of her sister who lived in London. The Tribunal

then suggested to the respondent that the hand writing showing the name and address of the sister was practically identical to the handwriting showing the name of the respondent and that an inference might be that if she accepted she had written her sister's name and address on the form that she had also written her own name on the form. Again the respondent did not accept that to be the position.

13. Accordingly the Tribunal had reached a stage where the only matter which was in dispute between the parties was whether the form AT5 had been given to the respondent prior to the tenancy agreement being signed. If it was accepted that the form AT5 had been given to the respondent then the tenancy which had been created was a short assured tenancy in terms of the Act. It is possible for a short assured tenancy to be created when the subjects are a single room in a shared house. Reference is made to section 14 of the 1988 Act. Again if it was accepted that this had been a properly created short assured tenancy then if the notice to quit and notice under section 33 had also been properly completed and served and given appropriate periods of notice then the Tribunal would be bound to grant the order.

14. The Tribunal adjourned proceedings for a few minutes to allow the member to consider matters. During that period, the member was able to view the application which the respondent had made to the Tribunal in respect of her tenancy deposit application. Among the papers in that application was a copy of the tenancy agreement which the respondent had submitted to the Tribunal in respect of her application seeking a payment in respect of the landlord's breach of the tenancy deposit regulations. The Tribunal noted that the agreement which had been submitted by the respondent in her previous application was not identical to the one which had been submitted by the landlord in this application. In particular there was a difference in the manner in which the name and address of the respondent's sister had been added. In the copy which had been produced by the landlord in respect of the eviction action, the first name of the respondent's sister had been written and then scored out and then re-inserted. In the copy which the respondent had

submitted along with her application to the Tribunal, no such error had been made.

15. The parties were questioned with regard to this discrepancy. It was suggested by the Tribunal member to the parties that the correct explanation was that at the time of signing there were two copies of the tenancy agreement available, both were signed and that one was given to the respondent to take away and one was taken by the landlord. The Tribunal also suggested to the parties that the writing which had been used to insert the respondent's name on the tenancy agreements appeared to be identical and also appeared to be identical to the manner in which the respondent's name had been inserted in the form AT5 which had been produced by the landlord. Accordingly the Tribunal member suggested to the respondent that the inference which should be drawn is that she herself had written her own name on the form AT5 and also on the two blank tenancy agreements. If that was the case then she could not possibly be able to state that she had not received the form AT5 during the signing process. The respondent did not clearly answer these questions but simply continued to insist to the Tribunal that she had not received the form AT5.
16. The respondent maintained her position that the Tribunal should fix a full hearing in order that this matter could be decided.
17. The Tribunal member indicated to parties that it did not appear that any further hearing was required. The Tribunal member indicated that a decision could be made on this matter today based on the evidence which had been heard and based on the documents which had been produced. The tribunal member indicated to parties that the tribunal intended to grant the order for possession and that a written decision to that effect would be issued. The tribunal member explained orally the reasons for this decision.

Findings in Fact

18. The Applicant and the Respondent as respectively the landlord and tenant entered into a tenancy of the property on 1 September 2017. The tenancy was a short assured tenancy in terms of the 1988 Act.
19. The form AT5 was given to the respondent prior to the signing of the tenancy agreement. The respondent wrote her own name on the form AT5 and on the tenancy agreement prior to signing the tenancy agreement.
20. On 30 May 2019 the Applicant served upon the respondent a notice to quit and a notice in terms of section 33 (1) (d) of the Act. These notices were served by recorded delivery post and were received by the respondent on 5 June 2019. Said notices became effective on 30 August 2019 and appropriate periods of notice were therefore given. The notices were correctly drafted and met the relevant terms of the 1988 Act.
21. The basis for the order for possession was accordingly established.

Reasons for Decision

22. Section 33 of the 1988 Act states that the Tribunal must grant an order for possession of a short assured tenancy where that tenancy has reached its term, that tacit relocation is not operating, where no new contractual tenancy has been agreed between the parties and where the landlord has also given notice to the respondent in the manner required by section 33 (1) (d).
23. The Tribunal were satisfied that all of these requirements had been met. The Tribunal took the view that the tenancy agreement had been signed by parties on 1 September 2017. The Tribunal were satisfied by the evidence heard from the parties and by the productions that the respondent had written her own name on both the form AT5 and on the tenancy agreement. Accordingly, on the balance of probabilities, the Tribunal were satisfied that the respondent had been given the required Form AT5 and that a short assured tenancy had been created on 1 September 2017. That tenancy had continued by tacit relocation on 1 September 2018 and was ended by the notice to quit which was served in May 2019 with effect from 30 August 2019.

24. The Tribunal were satisfied that the appropriate notice was given under section 33 (1) (d) of the 1988 Act.

25. Accordingly the Tribunal were satisfied that the reason for the order for possession had been established and in terms of the relevant section the Tribunal was obliged to grant the orders sought.

26. The Tribunal also took into account the provisions of rule 17 of the procedure rules and determined that it could make a final decision at the case management discussion and did not require to remit the case to a further hearing.

Decision

27. The order for recovery of possession is granted.

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

Date 15 November 2019