



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 18 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/EV/18/2973

**Re: Property at 53 Lennox Gardens, Linlithgow, West Lothian, EH49 7PZ (“the
Property”)**

Parties:

**Mr Ronald Shanks, Mrs Sharyn Shanks, 26 Bonhard Way, Bo'ness, West
Lothian, EH51 9RF (“the Applicant”)**

**Ms Susan Gibson, 53 Lennox Gardens, Linlithgow, West Lothian, EH49 7PZ
 (“the Respondent”)**

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

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

Background

By application, received by the Tribunal on 30 October 2018, the Applicant sought an Order for Possession of the Property under Grounds 8, 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988.

The application was accompanied by a copy of a Short Assured Tenancy Agreement commencing on 15 September 201 and, if not ended on 14 March 2018, continuing on a month to month basis until terminated by either party giving at least one month's prior written notice to the other party. The Tribunal was not provided with a copy AT5 Notice in respect of the tenancy agreement. The rent was stated to be £430 per month, payable in advance.

The application was also accompanied by a copy bank statement as at 3 October 2018, showing the last payment of rent by the Respondent of £430 having been received on 3 September 2018 and by a letter from the Applicant to the Respondent, dated 8 October 2018, giving notice of the termination of the tenancy with effect from

14 November 2018 and advising that the arrears as at that date would be £1,720, when the rent due on 15 October 2018 was taken into account.

The Applicant also provided the Tribunal with a copy of a Notice given under Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"), dated 14 October 2018, requiring the Respondent to remove from the Property on or before 14 November 2018 and a Notice, dated 14 October 1988, given under Section 19 of the 1988 Act, informing the Respondent that the Applicant intended to apply for an Order for Possession under Grounds 8, 11 and 12 of Schedule 5 to the 1988 Act. The latter Notice was incomplete, in that it failed to state the date before which proceedings would not be raised.

On 4 December 2018, the Tribunal advised the Applicant by letter of the omission from the Section 19 Notice and also advised the Applicant that the tenancy required to be terminated before the Applicant could seek an Order for Possession. On 5 December 2018, the Applicant advised the Tribunal that the Applicant was relying on an irritancy clause in the Tenancy Agreement as the reason for termination.

On 5 February 2019, The Tribunal advised the Parties by letter of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 22 February 2019.

The Respondent made no written representations to the Tribunal.

The Case Management Discussion

A Case Management Discussion was held at George House, Edinburgh on the afternoon of 27 February 2019. The Applicant was present. The Respondent was not present or represented.

The Applicant advised the Tribunal that the rent was remained in excess of three months in arrears, as no payments of rent had been received since the date of the application.

Reasons for Decision

The application was made under Section 18 of the 1988 Act. The Tribunal noted that the Applicant had served on the Respondent a Notice under Section 19, but that the Notice was incomplete, in that the section advising the date prior to which proceedings would not be raised was blank. The Tribunal also noted, however, that the Respondent had not been served with a Notice to Quit. Whilst a Notice to Quit itself does not have a prescribed form, it must contain certain prescribed information under section 112 of the Rent (Scotland) Act 1984 and the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988. Accordingly, as that information was not contained in the Applicant's letter to the Respondent of 8 October 2018, it did not constitute a valid Notice to Quit. The Tribunal observed that, strictly speaking, a Notice to Quit may not be necessary prior to an application under Section 18 of the 1988 Act and that the letter of 8 October 2018, relying on the irritancy clause contained in the Tenancy Agreement, might have sufficed, but the omission of the date in the Section 19 Notice was fatal to the application and the Tribunal had no option but to dismiss the application.

The Tribunal considered whether it might grant the application on the basis of the Notice given to the Respondent under Section 33 of the 1988 Act. This Notice applies to Short Assured Tenancies only and, as the Tribunal had not seen a copy AT5 Notice given at the time of the creation of tenancy, it could not hold that the tenancy was a Short Assured Tenancy, but the Section 33 Notice was, in any event, fatally flawed, in that Section 33 provides that a period of two months' notice must be

given and, in the present case, the Notice had only given one month's notice. Further, in an application under Section 33 of the 1988 Act, it is necessary to demonstrate that the Short Assured Tenancy has reached its end, without tacit relocation operating and this requires a Notice to Quit, containing the necessary prescribed information. Accordingly, any application under Section 33 of the 1988 Act would also have to be dismissed.

Decision

The Tribunal determined that the application should be dismissed.

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.

G. Clark

Legal Member/Chair

27 February 2019

Date