



**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/18/3290

Re: Property at 4 Bridge Street Lane, Edinburgh, EH15 1BZ (“the Property”)

Parties:

Shanley Lettings Ltd, 2/5 Drumsheugh Gardens, Edinburgh, EH3 7QJ (“the Applicant”)

Mr Jamie Anderson, 5 Bridge Street Lane, Edinburgh, EH15 1BZ (“the Respondent”)

Tribunal Members:

Lesley Johnston (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

In this application the Applicant seeks an Order for possession of the property at 5 Bridge Street Lane, Edinburgh, EH15 1BZ (‘the property’) in terms of section 33(1)(d) of the Housing (Scotland) Act 1988 (‘the Act’).

The application is made in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (‘the Rules’).

The application complies with the formal requirements of Rule 66.

The Respondent is the tenant, Jamie Anderson.

The Applicant lodged the following documents with the Tribunal:

1. Short Assured Tenancy Agreement between the parties comprising one page only and signed and dated 19 October 2017;
2. AT5 signed only the Respondent;
3. Section 33 Notice dated 18 September 2018
4. Notice to Quit dated 9 September 2018 (unsigned)
5. Certificate of intimation from Sheriff Officers dated 13 September 2018

The Case Management Discussion

The case called for a Case Management Discussion on 5 March 2019 at 2pm in George House, Edinburgh, together with a separate application for payment of rent arrears involving the same parties and property (tribunal ref: FTS/HPC/CV/19/0017). The decision is in respect of the application for eviction only.

The Applicant was represented by his Letting Agent, Sharon Shanley.

The Respondent was neither present nor represented.

The Tribunal was satisfied that the Respondent was given sufficient notice of the hearing, the citation having been served by Sheriff Officers on 13 February 2019. The Tribunal therefore exercised its discretion to proceed in the absence of the Respondent in terms of Rule 29.

Submissions

Ms Shanley submitted that she was made aware yesterday that the Respondent had vacated the property. She attended the property and the Respondent appeared to have left but had not yet returned the keys. In the circumstances, she insisted upon the application.

At the hearing, Ms Shanley produced:

1. the full signed tenancy agreement comprising 19 pages and signed and dated 19 October 2017;
2. A copy of the signed AT5;
3. A copy of the signed Notice to Quit;
4. A copy of the signed 'mutual agreement to end a tenancy dated 19 October 2017' in respect of an earlier tenancy between the parties;

Ms Shanley advised that she had omitted to lodge the signed copies due to an administrative oversight owing largely to there being two applications in which to lodge documentation and her providing documents by email.

The Tribunal exercised its discretion to allow these documents to be received late.

Ms Shanley asked for the application to be granted.

Findings in fact

1. The Applicant is the Landlord of the property;
2. By lease dated 19 October 2017 the parties entered into a tenancy agreement in respect of the property;
3. The term of lease is "12 months from the 1st November 2017 ('the start date') and will end on 1st November 2018 ('the end date'). If this agreement is not brought to an end by either party on the end date it will continue thereafter on a monthly basis until terminated by either party giving no less than two months notice to the other party."
4. An AT5 notice was served at the commencement of the tenancy, the parties having signed it on 19 October 2017;
5. The Landlord served a Notice to Quit and Section 33 Notice on the Respondent by Sheriff Officers on 13 September 2018. The Notices required the Respondent to give possession from 1 December 2018
6. A section 11 notice was issued by the Applicant's agent to Edinburgh Council on 7 February 2019
7. The application was made to this Tribunal on 7 December 2018.

Decision

The Tribunal is satisfied that the lease between the parties is a Short Assured Tenancy in terms of section 32 of the Act. That being the case, the Applicant may seek an Order from the Tribunal under section 33 of the Act.

In terms of section 33 of the Act, the Tribunal shall make an order for possession of the property if the Tribunal is satisfied that:

- (a) The short assured tenancy has reached its ish;
- (b) That tacit relocation is not operating;
- (c) That the landlord has given to the tenant notice stating that he requires possession of the house.

The Tribunal is satisfied that the Application meets the terms of section 33. The lease reached its ish on 1 December 2018. Tacit relocation is not operating. The Notice to Quit and Notice in terms of section 33 of the Act were served on the Respondent giving more than two months' notice.

In these circumstances, the Tribunal has no discretion and therefore grants the Order for Possession.

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.

Ms Lesley Johnston

Legal Member/Chair

5/3/19

Date