



**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 (Act)**

**Chamber Ref: FTS/HPC/EV/19/3701**

**Re: Property at 12 Strathmore Place, Dundee, DD5 2PD (“the Property”)**

**Parties:**

**The Scottish Garden City Housing Society Ltd, New Haig House, Logie Green Road, Edinburgh, EH7 4HQ (“the Applicant”)**

**Mr Stephen Goligher, 12 Strathmore Place, Dundee, DD5 2PD (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction and recovery of possession be granted.**

**Background**

This is 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**).

The Tribunal had regard to the following documents lodged in advance of the Hearing:

1. Application received 18 November 2019;
2. SAT commencing 11 November 2015;
3. AT5 dated 11 November 2015;
4. Notice to Quit dated 28 August 2019;
5. Section 33 Notice dated 28 August 2019;
6. Royal Mail track and Trace dated 29 August 2019;
7. Section 11 Notice dated 14 November 2019;

8. Written Submissions from the Respondent's Solicitor along with First and Second Inventory of Productions and List of Witnesses;
9. Written Submissions, Inventory of Productions and List of Witnesses for the Applicants;
10. Affidavits of Major and Mrs Barton.

## Hearing

Both Parties participated in the Hearing by conference call and were represented by their respective solicitors.

The Hearing took place over 2 days during which time the Tribunal heard evidence from the following witnesses:

### Applicants'

1. Applicants' (Chief Executive);
2. Major Barton;
3. Mrs Barton.

### Respondent's

1. Respondent;
2. Mr Frank Golliger;
3. Christine Brooks;
4. Richard Caffrey.

The evidence of the respective witnesses was, in summary, as follows:

(a) Chief Executive of the Applicant's ,Kevin Gray

Spoke mainly to the timing and content of various iterations of the website. Those versions at the time of the Respondent entering into the SAT did not contain references to "home for life". Copies of the webpages were produced. It was only the version that the Respondent had produced in respect of the current proceedings (dated 7 January 2020) that had the reference to "home for life".

In any event there was a "waiver" on the Applicant's website. The waiver on the website expressly warns viewers not to rely on the accuracy of the statements in relation to services.

The waiver was in the following terms:

*"The information contained in this website is for general information purposes only. The information is provided by SVGCA and while we endeavour to keep the information up to date and correct, we make no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability or availability with respect to the website or the information, services, or related graphics contained on the website for any purpose. Any reliance you place on such information is therefore strictly at your own risk. In no event will we be liable for any loss or damage*

*including without limitation, indirect or consequential loss or damage, or any loss or damage whatsoever arising from loss of data or profits arising out of, or in connection with, the use of this website. Every effort is made to keep the website up and running smoothly. However, SVGCA takes no responsibility for, and will not be liable for, the website being temporarily unavailable due to technical issues beyond our control.”*

There was no question of the Applicants having offered the Respondent a tenancy for life.

(b) Major Barton

Major Barton had provided an affidavit. His role with the Applicant was as a volunteer. He detailed his understanding of the applicant's policy for granting tenancies and the sign up of Mr Goligher's tenancy.

His company, Ferry Letting, managed repairs and maintenance, rent collection and the sign up of tenancies for the Applicant. He would normally explain his role to the Applicant's tenants.

When the Respondent's tenancy was granted, the policy was to grant an SAT then review it after the first six months to decide whether to grant an assured tenancy.

He explained the terms of the SAT to the Respondent by reading through each term. He would have explained that the SAT would be reviewed after six months and an assured tenancy might be offered.

A decision whether or not to grant an assured tenancy rested with the Applicant's office in Edinburgh. In particular they would review the case and issue a fresh tenancy agreement if they were minded to grant an assured tenancy.

He had not heard the phrase "home for life" nor been aware of its use on the applicant's website until the commencement of these proceedings.

The Respondent had been granted permission to install a driveway and dropped kerb at the property.

(c) Mrs Barton

Provided an affidavit in advance.

She carried out the viewing of properties for Ferry Letting. Ferry Letting would look after the Applicant's properties in respect of repairs and rent collection.

She witnessed the signing of the Respondent's lease. Major Barton went through the terms of the lease with the Respondent. She recalled being at the signing of the lease. She did not recall who else was present other than the Respondent.

Major Barton had a "script" for the Applicant's tenants and he followed that script in this case. As part of that script he explained there was a possibility that the tenancy

would be changed to an assured tenancy but that the decision was up to the Applicant.

She had not heard the expression “home for life” or “house for life” until these proceedings. She did not consider it a natural thing to say as the tenancy was a SAT and had the possibility of being an assured tenancy. In any event it was not for her or Major Barton to decide whether it would be an assured tenancy.

(d) Respondent

He gave evidence that he suffers from PTSD, social disorder and anxiety. He had found the Applicant’s website and had noticed that on the second page there was a statement to the effect that a tenancy would be a “house for life”.

The exact wording was *“Houses are rented for life, do not come up often and consequently, there is a long waiting list”*.

The version of the website produced and referred to was the version the Respondent had obtained on 7 January 2020.

The signing of the lease was in the kitchen of the Property. His parents and his son Jack were present. Major Barton was there but Mrs Barton was not. He understood Major Barton was signing the lease on behalf of the Applicant. Nothing was explained to him before the lease was signed.

Major Barton informed him that the initial six months of the lease were a “probationary” period and afterwards that it would be a “house for life” (until he passed). After signing the lease, Major Barton informed him that it used to be that three generations could have the house but now it was just one generation. He understood his family would be able to take the house on after him.

He had spent a lot of money on the Property after he moved in (approximately £26,500). He had been given permission for all work by Major Barton. He had lowered the kerb for a driveway and had excavations done to install it. He had levelled and landscaped the garden area and installed a smokeless log burner. He wouldn’t have done any of this work had he not considered the property was a house for life.

(e) Frank Goligher

The Applicant’s father.

He was present (along with his wife, his son, grandson and Major Barton) when the SAT was signed. Mrs Barton was not present.

The SAT was not gone through by Major Barton. Major Barton stated it was a six month lease followed by a “house for life”. He understood that the Respondent would be in the house for life. Major Barton said that the tenancy was a “lease for life” after the first six months. Major Barton mentioned inheritance of the tenancy (it used to be 3 generations and was now down to one).

The Respondent had carried out improvements to the Property (new bathroom, driveway, fireplace and living room floors) at a cost of thousands.

(f) Christine Brooks

She is a care support worker at Veterans First (part of the NHS). She provides practical and emotional support to veterans and is a veteran of the RAF herself.

She met the Respondent through the Veterans First peer support. She has known him since May 2018.

She provides support to other veterans in the area. She understands they all have the same landlord. The Respondent's tenancy was a "house for life" and "progression" was available to family members. Her understanding came from her own knowledge and her role and from dealing with other veterans and their understanding of their tenancy status. The Applicant's website also confirmed that.

(g) Richard Caffrey

He is a tenant of the Applicant's also at Strathmore Place, Dundee. He is a veteran of the Royal Artillery and was medically discharged. He is not fit to work and has complex PTSD.

His tenancy commenced in 2015. His landlord was Major Barton. He knew that Major Barton dealt with veterans through Ferry Letting. He signed his lease in the kitchen of his home at Strathmore Place. Major Barton told him that the tenancy was a short tenancy for six months and thereafter was a lifetime tenancy. If he had no "hiccups" in the first six months that would be it. He would be in the house until he died.

Having heard the evidence the Parties then made submissions which were in writing.

## **Respondent**

The Respondent's position was that the SAT was entered in to on the basis of representations made by the Applicant's on their website that this was a "house for life" and subsequent representations by Major Barton on the Applicant's behalf to the Respondent that after the first 6 months the lease would continue for life and that it would pass to the next generation.

### *Variation*

The Respondent's contention therefor was that the SAT had been varied and was no longer an SAT. At the very least the "ish" had been varied.

The Respondent had spent around £26,500 on the Property on reliance of the representations made by Major Barton.

### *Waiver/personal bar*

The Respondent had entered into the SAT on the basis of the representations made by Major Barton and on the website. He had spent thousands on the Property acting on the basis of these representations. The Applicant's consent had been obtained prior to the expenditure on the Property.

The Respondent had acted on the basis of these representations (to his prejudice) and the Applicant had, in any event waived any entitlement to insist upon the tenancy being a SAT by its actings (personal bar).

### **Applicant**

The Applicant's position was that the tenancy was an SAT and the Parties had agreed in writing to its terms. It had not been varied and the SAT had simply continued by tacit relocation for periods of 6 months. The SAT had been validly terminated and the eviction order should be granted. The requirements of section 33 had been met.

It was also contended that it was not possible to have a tenancy for life or one that was capable of being passed down the generations.

In any event, the waiver on the website expressly warns viewers not to rely on the accuracy of such statements. It could not be relied on by the Respondent.

The statement is not capable of forming any part of the contract between the Parties. The statement amounts to a boastful statement, akin to a company claiming its products are "the best".

### *Variation of the SAT*

The purported variation of the lease would create something not recognised in law. To create the right to a "house for life", a life-rent would be required as residential leases are not permitted to extend beyond 20 years. Finally, to create such a life-rent or any other variation to the parties' real rights by extending the lease term beyond 12 months must be in writing. No such writing exists.

### *Waiver/Personal Bar*

Waiver is a voluntary, informed and unequivocal election by a Party not to claim a right or raise an objection which it is open to that party to claim or raise; it must be clear and unqualified. The party relying on waiver must have conducted their affairs on the basis of the purported waiver.

The Respondent describes the purported statement, "houses are rented for life, do not come up often and consequently, there is a long waiting list" as an "invitation to treat". An invitation to treat is not an offer to contract but rather is an expression of willingness to contract. It is a willingness to negotiate. It is akin to an invitation to tender, the invite itself does not constitute an offer. Nor does it constitute a waiver of any rights.

The actual offer of let made by the Applicant is that contained within the written lease. There has been no waiver or acquiescence.

## **Findings in Fact**

In so far as material the Tribunal made the following findings in fact:

1. The Parties entered into an SAT commencing 11 November 2015;
2. An AT5 had been issued dated 11 November 2015;
3. The Applicant's website at or before the date of commencement of the SAT did not contain the statement that tenancies were a "home for life" or "house for life";
4. Major Barton told the Respondent at their meeting in the Property to sign the SAT that the Applicant's policy was to grant an SAT then review it after the first six months to decide whether to grant an assured tenancy. He did not tell the Respondent that after 6 months it would continue for life and pass to the next generation;
5. The Respondent has expended in excess of £26,500 on the Property with the Applicant's consent;
6. Notice to Quit had been served dated 28 August 2019;
7. Section 33 Notice had been served dated 28 August 2019;
8. The Notice to Quit and section 33 Notice had been received by the Respondent through Royal Mail track and Trace on 29 August 2019;
9. Section 11 Notice had been served on the local authority dated 14 November 2019;
10. The SAT had reached its end;
11. Tacit relocation was not operating;
12. No further contractual tenancy was in existence;
13. The Applicant had given the Respondent notice that it required possession.

## **Decision and Reasons**

The Tribunal considered the documentation before it, the evidence it had heard and the submissions made.

The Tribunal found the evidence of the Applicant's witnesses to be both credible and reliable. The Tribunal found Major and Mrs Barton and the Applicant's CEO, Mr Gray gave their evidence in a professional and measured manner. They were managing rented housing for veterans. There was no question of these being let unconditionally for life to tenants.

Their evidence was consistent, straightforward and from a position of considerable experience in dealing with the provision and management of letting properties to veterans. Their evidence was consistent with the facts advanced by them.

Whilst the Tribunal accepted that the Respondent may well have formed the belief that his tenancy was a "house for life" that belief was not formed in any way by any actions of the Applicant. Even if the statement on the website had appeared at the time claimed by the Respondent (which is not accepted) the waiver would have qualified that and the Tribunal would have found that no reasonable prospective tenant would have formed the view that this meant the tenancies were for life.

The Tribunal preferred and accepted the evidence of Major and Mrs Barton with regard to what was said at the signing of the SAT at the Property. They were straightforward,

consistent and professional with their recollection of the advice and information they provided to all tenants (not just the Respondent). Once again, their evidence was consistent with the facts advanced.

The Tribunal did not accept the Respondent's evidence or that of his father's as to what had been said. At best they were mistaken in their recollection of events. Their evidence was not consistent with the terms of the SAT they had signed and entered into.

The Tribunal accepted and preferred Mr Gray's evidence (which was supported by documentary evidence) as to the content of the website at the time the SAT was entered into. The Tribunal found that the Applicant's website at or around the time of the Respondent entering into the SAT did not contain the expression "house for life". Even if it had, it was caveated by the waiver which appeared at the bottom of the website.

The fact that the Applicant's had granted permission to the Respondent to carry out improvements to the Property did not, in any way, constitute a formal waiver, acquiescence or personal bar on the part of the Applicant's ability to terminate the SAT and to pursue recovery of possession of the Property.

The Tribunal accordingly found that there was no waiver, acquiescence or personal bar on the part of the Applicant's.

At the outset it had been agreed between the Parties that the formalities of terminating an SAT had been validly adhered to.

The Tribunal considered the terms of section 33 and found that the statutory requirements had been met. The Tribunal determined that at the order for eviction and recovery of possession should be 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.**

  
**Alan Stain**

**25 November 2020**

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**Legal Member/Chair**

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**Date**