



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/EV/18/0018

Re: Property at Flat 3/2, 20 Park Avenue, Dundee, DD4 6LU (“the Property”)

Parties:

Northern Housing Company Limited, 1 Explorer Road, Dundee, DD2 1EG (“the Applicant”)

Miss Natalia Gawlik, Mr Karol Ginter, Flat 3/2, 20 Park Avenue, Dundee, DD4 6LU (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Janine Green (Ordinary Member)

Decision

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

- **Background**

An application was submitted by the Applicants under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. A case management discussion was held on 7 March 2018, where a Hearing was fixed to determine a number of issues. Firstly, whether the notice served by the Applicants under section 33 of the Housing (Scotland) Act 1988 was valid. Secondly, whether the Notice to Quit served by the Applicants was valid.

- **The Hearing**

The Hearing took place on 15 June 2018. The Respondents were personally present, alongside an Interpreter, Dominik Szczepaniak. The Applicants were represented by Hayley Swanson, TC Young. Also present was Fiona Browne, Housing Officer of Northern Housing Company Limited.

Miss Swanson moved for the application for repossession to be granted.

Dealing with the issue of the validity of the Notice to Quit, Miss Swanson directed the Tribunal to the wording of Clause 1.4 of the tenancy agreement between the parties. This Clause states as follows:

“The tenancy starts of 4th October 2013 (the Entry Date) including the whole of the day to 28 October 2014 (this being the ish date of the tenancy)”.

Thereafter the clause goes on to say *“the tenancy will be automatically renewed for a period of one year starting on the day after the ish date unless the landlord and tenant agree in writing that the renewed tenancy should be for a different period.”*

Miss Swanson submitted that in terms of this clause, the lease would continue from 29 October 2014 to 28 October 2015, and yearly to the 28th October each thereafter. The Notice to Quit issued by the Applicants required the Respondents to remove on or before 28 October 2017. On that basis, it was submitted that the Notice to Quit issued by the Applicants was valid as it required them to remove on or before the ish date of the tenancy, being 28 October 2017. Miss Swanson submitted that a valid Notice to Quit had been served, and therefore tacit relocation was not operating. Consequently, she submitted that the terms of section 33 of the Housing (Scotland) Act 1988 had been complied with, namely:

- (a) That the short assured tenancy had reached its ish
- (b) That tacit relocation was not operating
- (c) That no further contractual tenancy was in existence
- (d) That the landlord had given to the tenant notice stating that he requires repossession of the house.

Miss Swanson submitted that even if the Tribunal were to consider that the true ish date of the tenancy was 29 October 2017, that the error in the Notice to Quit did not render it invalid and reference was made in this regard to the case of *McDonald v O'Donnell 2007 SLT 1227*. It was submitted that the error in the Notice to Quit was not prejudicial to the Respondents and that it provided fair notice to them that the landlord did not intend for tacit relocation to operate. Further, Miss Swanson submitted that as the Notice to Quit had given the requisite amount of notice (i.e. in excess of 40 days) that sufficient notice had been given to respondents and accordingly any error in the notice as to ish date would not invalidate it.

As regards the notice served on Mr Ginter under section 33 of the Housing (Scotland) Act 1988, the Notice was dated 9 August 2017 and advised the tenant that repossession was required on or before 28 October 2014, being a date already passed. Miss Swanson submitted that this was a typographical error and it was clear that the date in the past was incorrect and should have been the correlating date in the future ,ie. 28 October 2017. Reference was made to *Mannai Investment Co Ltd v Eagle Star Assurance [1997] UKHL 19*.

- Findings in Fact

1. The parties entered into a Short Assured Tenancy commencing 4 October 2013.
2. A Notice to Quit and notice in terms of section 33 of the Housing (Scotland) Act 1988 were served on the Respondents on 10 August 2017.
3. The Respondents remain resident in the Property.

- Reasons for Decision

The Tribunal considers that in terms of Clause 1.4 of the tenancy agreement ,after the end date (being 28 October 2014) the lease continued for a period of one year from 29 October 2014 to 29 October 2015, and to the 29 October in each year thereafter until terminated by either party by service of a valid Notice to Quit. In the absence of specific wording within the lease declaring whether or not either or both of the first and last days of the continued period would be included, the Tribunal was not satisfied that the lease would continue from 29 October 2014 to 28 October 2015 as submitted by the Applicant. The Tribunal considered that such a period would be one day short of a year. The Tribunal notes that no authorities were referred to by the Applicant to support her submissions in this regard.

Accordingly, the Tribunal held that the Notice to Quit did not tie in with the correct ish date.

As regards the Applicant's submissions that the incorrect ish date was irrelevant for the purposes of determining whether or not a Notice to Quit could be deemed to be invalid, the Tribunal were not satisfied of this. The Tribunal held that for a Notice to Quit to be valid, it must require the tenant to remove on the correct ish date of the tenancy and that this is an essential element of the Notice. The Notice to Quit issued by the Applicants required the Respondents to remove on a date earlier than the correct ish date and the Tribunal held that a landlord cannot call on a tenant to leave before the tenant is contractually obliged to do so under these circumstances. Regardless of the period of notice given, the Tribunal was not satisfied that the error could be ignored, and held that the error resulted in the Notice to Quit being invalid.

Without service of a valid Notice to Quit , the operation of tacit relocation cannot be prevented. Accordingly, the Tribunal held that tacit relocation was continuing and therefore the requirements of section 33 (1) (b) of the Housing (Scotland) Act 1988 had not been met. On that basis, the Applicants were not entitled to their Order.

The Tribunal did consider the validity of the section 33 notice and were satisfied that it was a typographical error, that it was clear that the date could be assumed to be that corresponding date in the future rather than the past and could be deemed to be valid regardless of that error.

- Decision

The application was refused.

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.

FIONA WATSON

Legal member/Chair

Date

15/6/18.