



**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/18/1844

**Re: Property at 124 Victoria Street, Craigshill, Livingston, West Lothian, EH54
5BJ (“the Property”)**

Parties:

**Mrs Elizabeth Thomson, 60 Martin Brae, Ladywell West, Livingston, West
Lothian, EH54 6UT (“the Applicant”)**

**Mr Piotr Krasowski, 124 Victoria Street, Craigshill, Livingston, West Lothian,
EH54 5BJ (“the Respondent”)**

Tribunal Members:

Andrew Upton (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) unanimously determined that an eviction order should be granted
against the Respondent.**

STATEMENT OF REASONS

The Tribunal makes the following findings in fact:-

- a. The applicant is the heritable proprietor of the property known as and forming 124 Victoria Street, Livingston, EH54 5BJ (“the Property”).
- b. The respondent first occupied the Property as a sub-tenant of the previous tenants of the applicant.
- c. In or around late 2010, due to the previous tenancy of the Property coming to an end, the respondent requested that he become the tenant of the applicant.
- d. On 24 January 2011, the parties entered into a Short Assured Tenancy Agreement in respect of the Property, a copy of which was produced with the application to the Tribunal.

- e. On 24 January 2011, prior to signing the Tenancy Agreement, the applicant gave the respondent notice in form AT5 that the tenancy was to be a short assured tenancy in terms of section 32 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The respondent signed a declaration on 24 January 2011 confirming that he had received the form AT5.
- f. In terms of clause 3 of the Tenancy Agreement, the tenancy commenced on 24 January 2011 and endured until 24 July 2011, at which time it continued on a monthly basis.
- g. On 11 April 2018, the applicant gave the respondent notice to quit the Property, together with a notice in terms of section 33 of the 1988 Act, in terms of which the respondent was told that he required to remove from the Property by 24 June 2018. Those notices were given by recorded delivery post, first class ordinary post and by depositing them through the letterbox at the Property.
- h. The parties have not entered into any other agreement regarding the Property.
- i. The respondent continues to reside at the Property with his partner.

The Tribunal makes the following findings in fact and law:-

- a. The contractual short assured tenancy reached its end on 24 June 2018.
- b. Tacit relocation is not operating in respect of the short assured tenancy agreement.
- c. On 11 April 2018, the applicant gave notice to the respondent stating that she required possession of the Property on 24 June 2018.

The Tribunal makes the following findings in law:-

- a. The requirements of section 33(1) of the 1988 Act have been satisfied by the applicant.

NOTE

1. This case came before the Tribunal for a Hearing on 13 December 2018. Both parties appeared personally and presented their own cases. The respondent benefited from the assistance of Ms Musko, an interpreter of the Polish language provided by the Tribunal. The Tribunal is most grateful to Ms Musko for her assistance.
2. The applicant seeks that the Tribunal grant an eviction order against the respondent. It was her position that the requirements of section 33 of the 1988 Act had been satisfied.

Evidence

Elizabeth Thomson

3. The applicant gave evidence on her own behalf. She told the Tribunal that the respondent had first come to occupy the Property as a sub-tenant of her previous tenant. However, her previous tenants had fallen into rent arrears. She was keen to advise that the respondent had been paying his rent to the previous tenants, but that they had not paid their rent to her. The applicant said that she and her husband had a discussion with the previous tenants which resulted in the tenants agreeing to remove from the Property. She recalled that the local authority initially expressed concern that the tenants had been removed from the Property, but that it was subsequently clarified that the tenants had chosen to remove from the Property.
4. The applicant advised that the respondent approached her and asked to become the tenant of the Property. She was agreeable to that, and immediately drew up the paperwork to begin a new short assured tenancy. On 24 January 2011, the applicant attended at the Property with the respondent for the purposes of signing the paperwork for the new tenancy. She advised that the respondent was given notice in form AT5 that the tenancy was to be a short assured tenancy. He was then given a declaration that he had received the form AT5, which he signed. Both were produced with this application. The applicant advised that she then discussed other matters with the respondent, such as the keeping of a key for the Property in case of emergencies. Finally, the parties signed the Short Assured Tenancy Agreement, which was produced with this application. The signed paperwork was taken away by the applicant, photocopied, and a copy then given to the respondent at a later date.
5. The applicant advised that the respondent had been in receipt of housing benefit until in or around 2014 when it stopped. At that time she said that she discovered that the respondent was subletting one of the bedrooms in the property. She advised that she had no issue with this at first. However, she subsequently became aware that the respondent had sub-let all of the bedrooms and was sleeping on a mattress on the living room floor. She advised that she had witnessed cigarette burn marks around the mattress and also discovered that the respondent had disconnected both smoke alarms that were in the Property. The applicant advised that she was concerned about the perceived danger of those circumstances, and told the respondent that he was not permitted to sleep on a mattress in the living room.
6. The applicant advised the Tribunal that in early 2018 she had attempted to serve a notice to quit the Property on the respondent by recorded delivery, but that by the time the recorded delivery letter was received insufficient notice had then been given by it. Accordingly, we are told that she then served a notice to quit and a notice under section 33 of the 1988 Act on the respondent by (i) recorded delivery post, (ii) first class ordinary post, and (iii) depositing through the letterbox at the Property on 11 April 2018. Both notices were dated 11 April 2018 and specified that the respondent required to remove from the Property on or before 24 June 2018. Copies of those notices were produced with this application.

7. The applicant advised that she carried out an inspection at the Property the weekend after the notices were served. At that time, the respondent confirmed that he had received the notices. The applicant said that a discussion took place between her and the respondent regarding what the respondent required to do in light of the notices.
8. The applicant advised that on 24 June 2018 she attended at the Property with her husband, Paul Thomson. The respondent was at the Property. There were approximately two dozen black bags in the living room. The respondent advised her that he had begun to pack and had stored some of his belongings in a friend's garage. However, he had been told by the local authority that he could stay until after the applicant had raised eviction proceedings.
9. The applicant confirmed that there was no other agreement in place between the parties in respect of the Property. The respondent has continued to pay rent. To the best of her knowledge, there were still other people living in the Property and the respondent was still sleeping in the living room. That appeared to be the applicant's primary concern.

Piotr Krasowski

10. The respondent gave his own evidence through the assistance of the interpreter. He confirmed that he had initially been the sub-tenant of the applicant's previous tenants. He had been paying rent to the previous tenant. When it became clear that he required to move out of the Property due to the termination of the head tenancy, he approached the applicant to request that he become the tenant. He accepted that he had entered into a Short Assured Tenancy Agreement with the applicant on 24 January 2011, and that he had signed the paperwork in the manner described by the applicant.
11. The respondent confirmed that he had sublet two bedrooms at the Property, but that he had done so with the applicant's permission. We are told that there are three bedrooms. He also confirmed that he was sleeping on a mattress in the living room. By way of explanation, he advised that he suffered from health problems. In particular, he has issues with his legs for which he is attending for physiotherapy and is scheduled for plastic surgery in January 2019. He is not currently working, and is signed off as unfit for work due to his condition. His mobility is restricted in that it is both painful and difficult (though not impossible) for him to tackle stairways; in particular, descending stairs is troublesome for him. For that reason, he moved a mattress into the living room just over a year ago and sleeps downstairs. His partner resides with him at the Property. We were told that the respondent's partner sleeps in the third bedroom.
12. The respondent advised that he had received both the Notice to Quit and the section 33 Notice from the applicant, and that they had been given to him by the methods described by the applicant.

13. The respondent advised the Tribunal that he had approached the local authority for housing until such time as he could resume work. He hoped that this would be soon.
14. The respondent advised that he knew that he would have to leave the Property, but explained that his financial situation is such that he cannot leave at present. Following receipt of the original letter from the Tribunal intimating the application, the respondent took steps to terminate his sub-leases. He confirmed that the sub-tenants had removed from the Property. Only he and his partner remain in the Property.

Discussion

15. In terms of the 1988 Act:-

“32.— Short assured tenancies.

- (1) A short assured tenancy is an assured tenancy—
 - (a) which is for a term of not less than six months; and
 - (b) in respect of which a notice is served as mentioned in subsection (2) below.
- (2) The notice referred to in subsection (1)(b) above is one which—
 - (a) is in such form as may be prescribed;
 - (b) is served before the creation of the assured tenancy;
 - (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and
 - (d) states that the assured tenancy to which it relates is to be a short assured tenancy.
- (3) Subject to subsection (4) below, if, at the end of a short assured tenancy—
 - (a) it continues by tacit relocation;the continued tenancy shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.
- (4) Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy, the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued tenancy is not to be a short assured tenancy.
- (5) Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.

33.— Recovery of possession on termination of a short assured tenancy.

- (1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied—
 - (a) that the short assured tenancy has reached its end;

(b) that tacit relocation is not operating; and
(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.
(2) The period of notice to be given under subsection (1)(d) above shall be—
(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;
(ii) in any other case, two months.
(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.
(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that ish shall end (without further notice) on the day on which the order takes effect.
(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”

16. Both witnesses gave evidence which generally accorded with what the other said. Where their evidence differed tended to be in relation to dates when the respondent's housing benefit stopped, when the sub-letting had started, and why the respondent was sleeping on a mattress in the living room. For the reasons that follow, the Tribunal was able to determine this application based on the agreed facts.
17. In light of the respondent's admissions, the Tribunal was in no doubt that notice in form AT5 had been given to the respondent prior to the commencement of the tenancy that it was to be a Short Assured Tenancy. Accordingly, the requirements of section 32 of the 1988 Act were satisfied.
18. The Tribunal was also satisfied, standing the respondent's admissions, that the Notice to Quit and section 33 Notice produced with the application had been given to the respondent on 11 April 2018 as described by the applicant.
19. The purpose of a Notice to Quit is to give notice to the other party to the lease that tacit relocation is not to operate when the lease reaches its next ish (natural expiry date). In terms of clause 3 of the Tenancy Agreement, the contractual tenancy was running monthly, with the ish being the 24th of the next month. The Tenancy Agreement does not specify a period of notice to be given in a notice to quit, and therefore the common law period of 40 days' notice applies to this situation. The Notice to Quit was given on 11 April 2018 and stated that the contractual tenancy was to end on 24 June 2018. 24 June 2018 was an ish, and the period of notice given was in excess of 40 days. The Tribunal was unanimously satisfied that the Notice to Quit was valid, and that the contractual tenancy ended on 24 June 2018.
20. In terms of section 33(1) of the 1988 Act, the Tribunal must grant an eviction order in relation to a Short Assured Tenancy if satisfied that (i) the tenancy has reached its ish, (ii) tacit relocation is not operating, and (iii) notice had been given to the tenant by the landlord that he required possession of the

house. In this case, the Tribunal was satisfied that the tenancy had reached its end at 24 June 2018 and that tacit relocation was not operating.

21. In addition, the respondent accepted that he had received the notice under section 33(1)(d) of the 1988 Act. That was the notice produced with the application. The period of notice to be given in terms of section 33(2) is two months unless a longer period is required by the tenancy agreement which, in this case, it is not. The respondent accepted that he had received the notice on 11 April 2018. The notice provided that possession of the Property was required on 24 June 2018. Accordingly, the notice gave in excess of the two months required by section 33(2).

22. It follows that the Tribunal unanimously determined that the requirements of section 33 of the 1988 Act are satisfied in this matter. That being the case, the Tribunal has no discretion; it must grant the eviction order. We accordingly do so.

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.

Andrew Upton

Legal Member/Chair

13 DECEMBER 2018

Date