

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/19/0164**

**Re: Property at Bush Cottages No2, Glen Tanar, Aboyne, AB34 5EU ("the Property")**

**Parties:**

**Mr Michael Bruce, Brooks House, Glen Tanar, Aboyne, AB34 5EU ("the Applicant")**

**Ms Vikki Semple, Bush Cottages No2, Glen Tanar, Aboyne, AB34 5EU ("the Respondent")**

**Tribunal Members:**

**Susan Christie (Legal Member)**

**Decision**

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

**Background**

1. The application for recovery of possession of the Property under Rule 65 was received by the Tribunal on 15 January 2019.
2. A Notice of Acceptance of the Application by the Tribunal made under Rule 9 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 as amended ("the Rules") is dated 29 January 2019.
3. The application type was stated as being made under Rule 66 (Possession on Termination of Short Assured Tenancy).
4. On 28 February 2019 a letter was sent to the Applicant's Representative intimating the day and time of the Case Management Discussion and providing information on that.
5. On 28 February 2019 Sheriff Officers served a copy of a letter from the Tribunal dated 28 February 2019 on the Respondent together with supporting documentation, specifically drawing her attention to the Case Management

Discussion assigned for 20 March 2019 by teleconference call from Room 110, 20 York Street, Glasgow, G2 8GT. The mode of service being by way of letterbox service.

6. The letter itself sets out the details of the application made and invites the Respondent to make written representations to the Tribunal by 18 March 2019; highlights to the Respondent that the Tribunal may do anything at a Case Management Discussion (CMD) which it may do at a Hearing including making a decision on the application which may involve making or refusing an eviction order ; and that non participation in the Case Management Discussion, would not stop a decision or order being made by the Tribunal if the Tribunal considers that it has sufficient information before it to do so and the procedure has been fair.
7. No written representations were made by the Respondent.
8. The Respondent applied to the Tribunal on 18 March 2019 at 15.05 to postpone the CMD. This was crossed over to the Applicant's Representative on 19 March 2019 and it was opposed as the Notices were served on 14 January and it was considered she had time to prepare. The Tribunal was not prepared to consider the postponement request until discussions took place around that at the CMD.

### **The Case Management Discussion (CMD)**

9. The Applicant was represented by Mr Havers.
10. The Respondent represented herself and participated.
11. The documents lodged in support of the application were examined and discussed.
12. A copy AT5 form had been produced along with a Short-Assured Tenancy Agreement (SAT) between the Parties. The copy AT5 produced appeared to have been signed by the Respondent on 6 September 2017 prior to the tenancy agreement but the copy produced was not signed by the Landlord's authorised agent until 12 September 2017. The tenancy agreement had been signed on 6 September 2017 I was not satisfied for the purposes of today's hearing that the documentation currently produced showed without doubt that the tenancy was a Short-Assured Tenancy (SAT) under section 32 of the Housing (Scotland) Act 1988, as amended ("the 1988 Act"). It may well be.
13. The initial term of the (S)AT was 9 September 2017 to 8 September 2017 and continued in terms of the contract thereafter monthly on the 8th of each month, until such times as it is ended by either party giving notice to terminate it.
14. The tenancy agreement provides at clause three: 'After the expiry of the initial term either party can end the lease on giving not less than 2 months written notice to the other party'.
15. The tenancy agreement does not specifically provide, *by replicating the Grounds in full*, that the tenancy can be brought to an end at any time during the tenancy on the specific Grounds relied upon.
16. A Notice to Quit, relied upon as supporting the application, had been served on the Respondent at the instance of the Applicant by his letting agent dated 14 December 2018 giving notice for the Respondent to leave the Property by

- 14 January 2019. It appeared to have been served by recorded delivery post on 15 December 2018 along with a cover letter and AT6.
17. I was not satisfied that the Notice to Quit was valid as the removal date did not coincide with a finish date for the tenancy nor did it give the minimum period of notice required under the tenancy agreement.
18. The discussion took place mainly around the flaws in the Notice to Quit. It was clear that if I refused the application today the Applicant would proceed to serve fresh documentation and make a fresh application for recovery of possession of the Property from the Respondent given the high level of rent arrears. The Respondent should have been left knowing, as was stated by the Applicant's Representative, that the situation was a serious one.
19. I was told that a fresh rent statement was submitted belatedly showing a figure owed of £5321.57 as at 19 March 2019 and discussion took place around that. It was to be crossed over to the Respondent for her to consider in respect of the separate application for payment.

### **Findings in Fact**

- I. The parties entered into a Tenancy Agreement, stated to be a Short Assured tenancy on 6 September 2017.
- II. The tenancy term is 9 September 2017 to 8 September 2018 and recurs monthly thereafter on the 8<sup>th</sup> of every month.
- III. The Tenancy Agreement provides for not less than two months written notice to be given by either Party to end the lease.
- IV. The Tenancy Agreement does not replicate exactly the relevant statutory Grounds relied upon which could have allowed the Application to proceed without service of a valid Notice to Quit.
- V. The Notice to Quit served on the Respondent at the instance of the Applicant dated 14 December 2018 is not a valid one.
- VI. The contractual (Short) Assured Tenancy continues by reason of tacit relocation.

### **Finding in Fact and law**

- VII. The Applicant is entitled not to recover possession of the Property from the Respondent in respect of this application.

### **Reasons for Decision & Decision**

The tenancy term is 9 September 2017 to 8 September 2018 and recurs monthly thereafter on the 8<sup>th</sup> of every month. The tenancy agreement provides at clause three 'After the expiry of the initial term either party can end the lease on giving not less than 2 months written notice to the other party'. The tenancy agreement does not specifically provide, by replicating the Grounds in full, that the tenancy can be brought to an end at any time during the tenancy on a specific Ground relied upon. A Notice to Quit had been served on the Respondent at the instance of the Applicant by his letting agent dated 14 December 2018 giving notice for the Respondent to leave the Property by 14 January 2019. It appeared to have been served by recorded delivery post on 15 December 2018 along with a cover letter and AT6.

I was not satisfied that the Notice to Quit was valid as the removal date did not coincide with a finish date for the tenancy nor did it give the minimum period of notice required under the tenancy agreement.

The tenancy agreement does not specifically provide, by replicating the Grounds in full, that the tenancy can be brought to an end at any time during the tenancy on the specific Grounds relied upon. As there was no such detailed provision in the Tenancy Agreement the landlord must serve a valid Notice to Quit for a finish date before the AT6 can be used. Accordingly, this application is 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.**

Susan Christie

Legal Member/Chair

20 March 2019

Date