

Housing and Property Chamber
First-tier Tribunal for Scotland



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 (“the 1988 Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/18/2822

**Re: Property at 19 Wester Suttieslea Gardens, Newtongrange, Midlothian, EH22 4FE
 (“the Property”)**

Parties:

**Lowther Homes Limited, 25 Cochrane Street, Glasgow, G1 1HL
 (“the Applicant”)**

**Wheatley Housing Group Litigation Team, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL
 (“the Applicant’s Representative”)**

**Ms Lisa Millar, 19 Wester Suttieslea Gardens, Newtongrange, Midlothian, EH22 4FE
 (“the Respondent”)**

Tribunal Members:

Susanne L M Tanner Q.C. (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) (1) was satisfied (a) that the short assured tenancy between the parties in respect of the Property has reached its end; (b) that tacit relocation is not operating; (c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and (d) the Applicant has given to the Respondent more than two months’ notice stating that she

required possession of the Property; and (2) made an order for possession in terms of Section 33 of the 1988 Act.

Statement of Reasons

1. Procedural Background

- 1.1. The Applicant, care of the Applicant's Representative, made an application to the tribunal on 22 October 2018 in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
- 1.2. The Applicant sought the Respondent's eviction from the Property under Section 33 of the 1988 Act.
- 1.3. The Applicant's Representative lodged:
 - 1.3.1. A paper apart to the Application Form;
 - 1.3.2. a copy of the short assured tenancy agreement between Dunedin Canmore Enterprise Limited (the landlord) and the Respondent and Mr Greg McPherson (the tenants) dated 15 December 2014;
 - 1.3.3. a copy of the AT5 notice dated 9 December 2014 and proof of receipt by the Respondent and Greg McPherson dated 15 December 2014 at 10.32am;
 - 1.3.4. a copy of the Notices to Quit to the Respondent and Mr McPherson dated 11 June 2018;
 - 1.3.5. a copy of the Section 33 notice to the Respondent and Mr McPherson dated 11 June 2018;
 - 1.3.6. A copy of the Certificate of Service of the Notice to Quit and Section 33 Notice dated 14th June 2018;
 - 1.3.7. A copy of the Section 11 notice.
 - 1.3.8. A lease between Dunedin Canmore Housing Limited and Lowther Homes Limited dated 31 March 2017; and

1.3.9. A Schedule to the Property leased by Dunedin Canmore Housing Limited to Lowther Homes Limited in terms of the lease.

1.4. The Application was referred for determination by the tribunal on 29 October 2018.

1.5. A Case Management Discussion (“CMD”) was fixed to enable the tribunal to explore how the parties’ dispute may be efficiently resolved. Parties were notified by letter dated 19 November 2018 of the date, time and a place of the CMD. The Respondent was invited to submit any written representations by 6 December 2018. The notification and Application documentation were served on the Respondent by Sheriff Officers on 20 November 2018. The notification and Application documentation were served on the Respondent by Sheriff Officers on 20 November 2018. Parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. Parties were advised that if they do not attend the CMD this will 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.

1.6. The Respondent did not submit any written representations or make any contact with the tribunal’s administration.

2. Case Management Discussion (“CMD”) – 12 December 2018 at 1400h George house, 126 George Street, Edinburgh

2.1. The CMD proceeded, together with the CMD in a related Application for payment (CV/18/2825).

2.2. Ms Swanson, from TC Young Solicitors, attended on behalf of the Applicant’s Representative / the Applicant.

2.3. The Respondent did not appear or contact the tribunal’s administration.

2.4. The tribunal chair explored with the Ms Swanson how the parties’ dispute may be efficiently resolved and considered whether to do anything it may do at a hearing, including making a decision in terms of Rule 17 of the 2017 Rules.

2.5. Ms Swanson sought an order for possession at the CMD in terms of Section 33 of the 1988 Act and Rule 66 of the 2017 Rules.

2.6. The tribunal chair considered the documentation which had been lodged in support of the Application.

2.6.1. There is a valid AT5 dated 9 December 2014 from the Applicant's predecessor in title, Dunedin Canmore Enterprise Limited, to the Respondent and Greg McPherson, which was signed and received by the Respondent and Greg McPherson before the creation of the Short Assured Tenancy on 15 December 2014.

2.6.2. The Short Assured Tenancy agreement between Dunedin Canmore Enterprise Limited and the Respondent and Greg McPherson as joint tenants in respect of the Property, which was signed by both parties on 15 December 2014. The initial term was for the period 15 December 2014 to 22 June 2015 and since then the tenancy has tacitly has relocated on a calendar monthly basis.

2.6.3. The Applicant's Representative's paper apart to the Application provides that the title to the Property is in the name of Dunedin Canmore Housing Association Limited and it is leased to Lowther Homes Limited. The Short Assured Tenancy was entered into when Dunedin Canmore Enterprise Limited were managing on behalf of Dunedin Canmore Housing. The assets of Dunedin Canmore Enterprise Limited were formally transferred to Dunedin Canmore Housing Limited in terms of a transfer of engagements on 20 March 2017. Dunedin Canmore Housing Limited in turn leased this and other properties to Lowther Homes Limited in terms of a lease dated 30 March 2017. The lease between Dunedin Canmore Housing Limited and Lowther Homes Limited dated 31 March 2017 has been produced together with a schedule of properties, which lease is continuing by tacit relocation. Lowther Homes acquired the lease when the Respondent was a sitting tenant. The obligations of the original tenancy agreement are therefore currently due to Lowther Homes Limited. All of the said companies are part of the Wheatley Housing Group.

2.6.4. A Schedule to the Property leased by Dunedin Canmore Housing Limited to Lowther Homes Limited in terms of the lease.

2.6.5. The Applicant's Representative has provided proof of service of a Notice to Quit and Section 33 notice on the Respondent on 14 June 2018.

2.6.6. The Section 33 Notices notified the Respondent and Greg McPherson that the Applicant required possession of the Property on 22 August 2018. The Notice to Quit contains the prescribed information.

3. Submissions by Applicant's Representative

3.1. In relation to the position with the joint tenancy, Ms Swanson submitted a copy of an email chain between Mr Greg McPherson and the Applicant from 5 and 6 March 2018 in which Mr McPherson gave notice to the Applicant on 28 February that he "would like to put one months' notice in for the property I rent from you as of today 28th February 2018". for the tenancy". The tribunal chair allowed the document to be lodged and a copy of the emails was made by the tribunal clerk and placed on the file. Ms Swanson submitted that the Applicant is the mid-market branch of a housing association. The did not seem to have received it on 28th or by 5 March 2018. He left the property on 2 April 2018. The tribunal chair asked if there had been a reply to Mr McPherson or correspondence to the Respondent in the present action in relation to the tenancy of the Property following receipt of the letter. Ms Swanson stated that there was no reply that she could provide and requested an adjournment to make contact with the solicitors principally instructed by the Applicant.

3.2. Following the adjournment, Ms Swanson submitted that the Applicant interpreted the position following Mr McPherson's email as the original tenancy continuing in the sole name of the Respondent. The Applicant views that the tenancy, in so far as it relates to Mr McPherson as a joint tenant, terminated on 2 April 2018. The person dealing with it at the Applicant's business has now left. Ms Swanson advised that the Applicant's standard procedure is to acknowledge notices in the form that they come in, in this case by email. However, as the person who dealt with it is no longer with the Applicant and has not saved the email, the Applicant's position is that the tenancy has not ended as a result of one tenant's notice. Ms Swanson submitted that Clause 1 and Clause 30 of the Short Assured Tenancy suggest that each of the tenants would have needed to give notice. The Applicant has treated the tenancy as ongoing with the Respondent only. The Applicant's standard procedure is to send out a letter or email to the other (remaining) tenant. However, there is no proof of what was sent in this case because the person who dealt with it has not saved it, if it was ever in existence, and is no longer there to confirm what was sent and when. Ms Swanson said that she did not ask if there was any correspondence between the Applicant and the Respondent between 2 April 2018 and now.

4. On the basis of the submissions and evidence on behalf of the Applicant (and in the absence of oral or written representations from the Respondent) the tribunal makes the following findings-in-fact:

4.1.1. There was a Short Assured Tenancy agreement between the parties in respect of the Property for the initial period from 15 December 2014 to 22 June 2015.

4.1.2. Since 22 June 2015 the tenancy has tacitly relocated on a calendar monthly basis.

4.1.3. The Short Assured Tenancy was entered into when Dunedin Canmore Enterprise Limited were managing on behalf of Dunedin Canmore Housing.

4.1.4. The assets of Dunedin Canmore Enterprise Limited were formally transferred to Dunedin Canmore Housing Limited in terms of a transfer of engagements on 20 March 2017.

4.1.5. Dunedin Canmore Housing Limited leased the Property to the Applicant in terms of a lease dated 30 March 2017, which lease is continuing by tacit relocation.

4.1.6. The Applicant acquired the lease when the Respondent was a sitting tenant.

4.1.7. The obligations of the original short tenancy agreement are due to by the Respondent to the Applicant.

4.1.8. The joint tenant Mr Gary McPherson named on the tenancy agreement left the Property on 2 April 2018.

4.1.9. The Notices to Quit and Section 33 notices were served by Sheriff Officers on the Respondent and Mr McPherson on 14 June 2018.

4.1.10. The short assured tenancy reached its end on 22 August 2018.

4.1.11. Tacit relocation is not operating.

4.1.12. No further contractual tenancy is for the time being in existence.

4.1.13. The Applicant has given the Respondent notice that it requires possession of the House on 9 September 2018.

4.1.14. The Applicant has given notice to the local authority in terms of the Homelessness etc. (Scotland) Act 2003 of its intention to apply for an eviction order.

5. Findings in Fact and Law

5.1. The requirements of Section 33 of the 1988 Act have been met, namely that (a) that the short assured tenancy between the parties in respect of the Property has reached its end; (b) that tacit relocation is not operating; (c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and (d) the Applicant has given to the tenant more than two months' notice stating that it required possession of the Property.

5.2. The tribunal is therefore required to make an order for possession in terms of Section 33(1) of the 1988 Act.

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.

Susanne L M Tanner Q.C.

Susanne L M Tanner Q.C.
Legal Member/Chair

12 December 2018