

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**

Chamber Ref: FTS/HPC/EV/19/2780

**Re: Property at 2 Bush Cottages, Glen Tanar, Aboyne, AB34 5EU (“the
Property”)**

Parties:

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

**Ms Vikki Semple, 2 Bush Cottages, Glen Tanar, Aboyne, AB34 5EU (“the
Respondent”)**

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision (in absence of the Respondent)

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

Background:

The application for an order for Possession on Termination of a Short Assured Tenancy in terms of S 33 of The Housing (Scotland) Act 1988 was made on 5 September 2019. The Applicant lodged with the application the Short Assured Tenancy Agreement commencing on 9 September 2017 as well as a copy of the AT5, the Notice to Quit dated 4 April 2019 and S 33 Notice dated 4 April 2019. The bundle also contained the S 11 Notice to the Local Authority under the Homelessness etc (Scotland) Act 2003 and a copy of a decision of the First-tier Tribunal of 8 May 2019 regarding a payment order granted for arrears of rent for the property against the Respondent, an AT6 document dated 4 April 2019, rent statement to 23 August 2019, a letter signed by the Respondent agreeing to vacate the property on 17 July 2019 and email correspondence between the Applicant’s representative Mr Havers and the Respondent between 1 April 2019 and 4 April 2019.

The Respondent lodged an email from her to the Applicant dated 31 May 2018 headed "ideas", the Applicant's reply dated 31 May 2018, written representations dated 19 October 2019, written representations dated 21 October 2019 and written representations dated 23 October 2019.

The documents are referred to for their terms and held to be incorporated herein.

A Case Management Discussion (CMD) was scheduled for 8 November 2019 and both parties notified of the date and time. Service on the Respondent by Sheriff Officers was confirmed to have taken place on 8 October 2019. The intimation to the parties included the information that the Tribunal may do anything at a Case Management Discussion which it may do at a hearing, including making a decision on the application.

The Respondent had been given the 14 days notice required in Rule 24 of the Rules of Procedure.

The Case Management Discussion:

The Respondent did not attend. Mr Havers, the Applicant's representative attended via telephone link. On behalf of the Applicant Mr Havers moved the application.

He confirmed that the original Short Assured Tenancy had continued on tacit relocation month to month and was only terminated as a contractual tenancy by the Notice to Quit issued and served on 4 April 2019 for the end date of 8 June 2019. A S 33 Notice had been served at the same time for the same date. He was not relying on the AT6 document. The continuation of the tenancy on that basis had been a finding in fact in the decision of the First-tier Tribunal in case FTS/HPC/CV/19/0162. There had been no other contractual tenancy entered into between the parties. Mr Havers confirmed that despite the letter dated 10 July 2019 which was signed by the Respondent stating that the deposit would be released to the Respondent on the agreement that she would move out on 17 July 2019 she had remained in the property and continued to occupy it.

The Respondent did not attend and made no representations at the CMD.

Findings in Fact:

1. The Applicant and the Respondent entered into a Short Assured Tenancy on for an initial period of 9 September 2017 to 8 September 2018.
2. Document AT5 was receipted and signed by the Respondent on 6 September 2017
3. Clause 3 states "If the let continues after 8 September 2018 it will be let on a month to month basis" .
4. In terms of clause 3 of the tenancy agreement "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"
5. The notice period was 2 months.

6. Notice to Quit was served on the Respondent on 4 April 2019 advising of the termination of the tenancy on the termination date of 8 June 2019.
7. Notice in terms of S 33 (1) d of The Housing (Scotland) Act 1988 was served on the Respondent on 4 April 2019 advising of the intention to repossess the premises on 8 June 2019.
8. Notice to the Local Authority was given in terms of S 11 of the Homelessness Etc (Scotland) Act 2003.
9. The Respondent continued to occupy the property at the date of the CMD.
10. The Respondent continued to make partial rental payments for the property as shown in the statement until at least 23 August 2019.
11. The Respondent acknowledged the receipt of the Notice to Quit and S 33 Notice on 4 April 2019.

Reasons for the Decision:

The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

- (a) may make a decision without a hearing if the First-tier Tribunal considers that—
 - (i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
 - (ii) to do so will not be contrary to the interests of the parties; and
- (b) must make a decision without a hearing where the decision relates to—
 - (i) correcting; or
 - (ii) reviewing on a point of law, a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

The Tribunal did not consider that there was any need for a hearing as the essential facts of the case were sufficiently evidenced to make the relevant findings in fact to determine the case.

The Tribunal makes the decision on the basis of the documents lodged by the Applicant and the Respondent and the information given at the CMD.

In terms of S 33 (1) of the Housing (Scotland) Act 1988 an order for possession of the house under a Short Assured Tenancy shall be made if the Tribunal is satisfied that:

1. The short assured tenancy has reached its term
2. That tacit relocation is not operating
3. That no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
4. That the landlord has given to the tenant notice that he requires possession of the house.
5. rental payments of insufficient amounts to cover the monthly rent were made by the Respondent until at least August 2019 as per the lodged Statement

The Tribunal was satisfied on the basis of the documents lodged that that all requirements for recovery of possession in terms of the Housing Scotland Act 1988 had been complied with.

The written representations of the Respondent essentially stated that there had been no contract since 31 May 2018. She had submitted to the Tribunal an email of that date to the Applicant which stated: "Could we discuss alternative arrangements re rental? This was discussed at the beginning before taking the place on but I hadn't really considered until more recently. I would really like to keep on Bush cottages and it would be great if I could keep it on and invest in that way as well as maintain it and upgrade it decoratively as much as I can envision and manage, on a lower rent. My initial ideas would be to redecorate and re-carpet the entire house to begin with. At the end of the day as it is rented, any investment would stand and stay with the estate and would make it even more living-in friendly each step along the process. I'm interested in the entire estate and doing what I can. ... I could probably keep going at similar rental until we have come to some sort of focus on what to do You can let me know. In either case I 'm dedicated to the estate." which was answered by an email from the Applicant "Vikie, thanks for your interest, I'll pass this on to the factor and we'll get back to you once we've had a think."

The lease is for a fixed initial period to 8 September 2018. The first possible end date thus would be 8 September 2019. It is a request of the Respondent to negotiate a lower rent but also gives a clear indication that she does not wish to terminate the tenancy and wishes to remain in the property. It mentions no date of termination of the tenancy or moving out. The Tribunal was satisfied that this does not constitute a written notice to quit in terms of the tenancy agreement and indeed the Respondent continued to reside at the property and made payments towards the rent as shown in the rental statement.

The lease clearly relies on a month to month tacit relocation of the tenancy until terminated by a written notice of at least 2 months. The email of the Respondent to the Applicant of 31 May 2018 does not give notice in terms of the lease. She stated there was no new written agreement in place. This confirms that the only lease in place is the original Short Assured Tenancy commencing 9 September 2017. She did not attend the CMD to insist on her opposition to the order or to provide further information that would challenge the material facts of the case.

The Applicant's representative explained that the lease continued on tacit relocation until terminated by the Notice to Quit to 8 June 2019.

On the basis of the documents lodged and the information from Mr Havers the Tribunal was satisfied that the original lease continued after 8 September 2018 month to month.

A Notice to Quit and a Notice in terms of S 33 (1) (d) of the Housing (Scotland) Act 1988 had been served on the Respondent. In her email of 4 April 2019 she had confirmed receipt and opening of the Notice documents.

The Tribunal is satisfied that these gave the required 2 months notice in terms of S33 of the Act and the required 2 months notice in the Notice to Quit in terms of clause 3 of the lease.

The Tribunal concluded it was not necessary to fix a hearing as the Respondent had not attended the CMD and opposed the order being granted and as the documents lodged evidenced sufficiently the matters required to determine whether the legal tests for an order in terms of S 33 of the Housing (Scotland) Act 1988 are met.

If the tests of S 33 (1) of the Housing (Scotland) Act 1988 are met there is no discretion for the Tribunal and the order must be granted.

The tenancy document and AT5 document show that the tenancy is a Short Assured Tenancy which has reached its ish. The landlord had served a notice to quit with the required 2 months notice period for the ish on 8 June 2019 and thus tacit relocation does not operate. The landlord had served on the Respondents a notice in terms of S 33 (1) d of the Housing (Scotland) Act 1988 with the required 2 months notice period.

The Tribunal has no discretion in the matter. The conditions for an order for possession in terms of S 33 (1) of the Housing (Scotland) Act 1988 have been evidenced by the Applicant in the documentation lodged. Thus the Tribunal grants the order for possession as per the application.

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.

Petra Hennig-McFatrige

Legal Member/Chair

Date

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