



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/20/1044

Re: Property at 29/7 Bellevue Road, Edinburgh, EH7 4DL (“the Property”)

Parties:

Mr John Harrison Beck, Mrs Eileen Margaret Beck, Ardmara, Gairloch, IV21 2BH (“the Applicants”)

Mr Andrew Beck, 29/7 Bellevue Road, Edinburgh, EH7 4DL (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicants.

Background

1. By application dated 9 April 2020 the Applicants seeks an order for possession of the property in terms of Section 33 of the 1988 Act. Documents lodged in support of the application include a copy short assured tenancy agreement, AT5 Notice, Notice to Quit and Section 33 Notice with post office receipt and track and trace report, and Notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 16 July 2020. Both parties were notified that a case management discussion (“CMD”) would take place by telephone case

conference on 13 August 2020 at 2pm and they were required to participate.

3. The case called for a CMD on 13 August 2020 at 2pm. The Applicant was represented by Mr Gardener, solicitor. The Respondent participated in person.

Case Management Discussion

4. Mr Gardener advised the Legal Member that the Applicant seeks an order for possession of the property. The Legal Member advised parties that most of documents lodged with the application appear to be in order. However, there appeared to be an issue with the AT5. It was noted that, although the AT5 and tenancy agreement appear to have been signed on the same date, the time on the AT5 is 12.15, which is after the time specified on the tenancy agreement of 10.30. Mr Gardener referred the Legal Member to clause 19 of the tenancy agreement which states that the Respondent acknowledges having received the AT5 notice before signing the agreement. He indicated that the reference to 12.15 could be an error but would require to take instructions and perhaps lead evidence from the Applicant and the witness to the agreement. He also pointed out that the tenancy did not start until 1 January 2009, and the AT5 notice was certainly received before that date.
5. Mr Beck advised the Legal Member that he can't really remember the sequence in which the documents were signed, but thinks they were all signed at the same time, and not nearly 2 hours apart. However, he cannot be sure. The Legal Member explained that, if the AT5 had been received after the tenancy was signed, this could render the proceedings incompetent. The Legal Member asked whether Mr Beck wished to have time to consider the position, and perhaps take advice. Mr Beck advised the Legal Member that he did not want to delay the eviction process. He cannot recall whether the tenancy agreement was signed before or after the AT5. He explained that he did not dispute the application for recovery of possession. The Applicants are his parents, and he accepts that they want the property back. He would have moved out by now, but the Government lockdown has made finding a new property difficult. He had participated in the CMD primarily to ascertain how long he would have to find a new property. He further advised that he had no wish to challenge the application on a technical basis, given he has no real recollection of the documents being signed. He confirmed that he did not take issue with the explanation that the time of 12.15 on the AT5 declaration, was an error.

Findings in Fact

6. The Applicant is the owner and landlord of the property.

7. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
8. The Respondent served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 23 August 2019.

Reasons for Decision

9. The application was submitted with a short assured tenancy agreement and AT5 Notice. A declaration attached to the AT5 Notice is signed by the Respondent and dated 12 December 2008. The time is stated to be 12.15. The declaration states, "I further declare that this form was issued to me in advance of signing the tenancy agreement." The tenancy agreement is signed and dated by the Respondent on 28 December 2008 at 10.31. This time is consistent with the other signatures on the agreement which are all between 10.30 and 10.35. The term of the tenancy is stated to be 1 January 2009 until 1 July 2009 and, if not terminated, it is to continue on a monthly basis until ended by either party.
10. Section 32 of the 1988 Act states "(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 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 on which - (a) is in such form as may be prescribed; (b) is served before the creation of the short 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 the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy."
11. The Legal Member is satisfied that the tenancy agreement which has been provided is for an initial term of 6 months and therefore meets the requirements of Section 32 (1) of the 1988 Act. From the documents lodged, there is some uncertainty as to whether the Applicant has complied with Section 32(2)(b). The Legal Member notes that the documents were signed 12 years ago and that the Respondent is not sure which document was received and signed first, and is neither able or willing to give evidence which would challenge the Applicant's position that a valid short assured tenancy has been created. As the Applicant points out, the Respondent signed an agreement which includes a clause which states that the AT5 has already been received. Furthermore, the declaration attached to the AT5 also states that it has been received prior to signature of the tenancy agreement. On the basis of the information provided, it appears likely that the wrong time has been written on the AT5 declaration document, and that the AT5 was issued before the Respondent signed the agreement. In the circumstances, the Legal Member is satisfied that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
12. The Applicant served a Notice to Quit on the Respondent on 23 August 2019. This Notice calls upon the Respondent to vacate the property on 1 November 2019, being an ish date. It contains the information prescribed by the Assured tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations

1988. It complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Legal Member is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated.

13. Section 33 of the 1988 Act states 51(1) of the 2016 Act states, “(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.” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) 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”. The Legal Member is satisfied that the tenancy has reached its end and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondent, giving more at least 2 months notice that the Applicant requires possession of the property.

14. As the Applicant has complied with the requirements of the 1988 Act, the Legal Member determines that an order for possession must be granted.

Decision

15. The Legal Member determines that an order for possession of the property should be granted against the Respondent.

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.

