



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/20/0445

Re: Property at 99 Baird Hill, Murray, East Kilbride, G75 0EG (“the Property”)

Parties:

Franchville Investments Limited, c/o The Property Bureau, Melville House, 70 Drymen Road, Bearsden, Glasgow, G61 2RH (“the Applicant”)

Mr Stephen Hyslop, Ms Michelle Drummond, 153 Leven Road, Coatbridge, ML5 2LW; 99 Baird Hill, Murray, East Kilbride, G75 0EG (“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 Respondents in favour of the Applicant.

Background

1. By application dated 7 February 2020 the Applicant seeks an order for possession of the property in terms of Section 33 Housing (Scotland) Act 1988. A style tenancy agreement, AT5 notices, Notices in terms of ground 2 of Schedule 5 of the 1988 Act (“ground 2 Notices”) , copy Notices to Quit, Section 33 Notices and Sheriff Officer certificates of service were lodged in support of the application. The Applicant also lodged a copy of the notice sent to the Local Authority in terms of Section 11 Homelessness etc (Scotland) Act 2003. In a letter to the Tribunal the Applicant advised that the tenancy agreement signed by the Respondents has been lost, but that the style agreement which has been submitted is in the same terms. The Applicant stated that the agreed term of

the tenancy was from 27 August 2015 for six months, and then on a monthly basis, at a rental of £650. The AT5 Notices lodged are dated 27 August 2015. They are addressed to the Respondents and signed on behalf of the Applicant. The Ground 2 Notices are also dated 27 August 2015. They state that the short assured tenancy is for the period 27 August 2017 until 27 February 2016. The Respondents have signed declarations on the ground 2 Notices, acknowledging receipt of same, and of the AT5 Notices. The Notices to Quit and Section 33 Notices are dated 23 October 2019 and call upon the Respondents to vacate the property on 27 December 2020. Sheriff Officer certificates of service appear to establish that the Notices were served on 24 October 2019.

2. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer on 6 March 2020. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 7 April 2020 and that they were required to attend. The CMD was postponed as a result of Government restrictions due to COVID 19. On 16 June 2020, the parties were advised that the CMD would now take place by conference call on 15 July 2020 at 10am. Both were provided with a telephone number and passcode. The Respondents were notified by recorded delivery letter sent to the tenancy subjects.
3. The application called for a CMD at 10.10 am on 15 July 2020. The Applicant was represented by Mr Buchanan, solicitor. The Respondents did not participate. Mr Buchanan advised the Legal Member that the second Respondent is still in occupation of the property. However, she has advised him that the Respondents are now separated, and the first Respondent no longer resides there. The Legal Member noted that, as the notification letter was sent to the property, the first Respondent may not have received it. Mr Buchanan confirmed that an order for possession is sought against both Respondents as he has not been able to verify whether the first Respondent has indeed vacated the property and that he remains a tenant. The CMD was adjourned to allow investigation to be made regarding the First Respondents address. The Applicant subsequently provided a trace report from a Sheriff Officer confirming the First Respondent’s new address. All parties were notified that a further CMD would take place by telephone conference call on 1 September 2020 at 10am and that they were required to participate.
4. On 10 and 27 August 2020 the First Respondent telephoned the Tribunal. He advised that he had not lived at the property for 2 years and was not liable for the arrears of rent. He further advised that he did not wish to participate in the CMD. On 27 August he sent an email to the Tribunal stating that he “used to be a tenant but have not lived in that property for over 2 years. I initially removed my name from first avenue over the phone. This also included my father who was guarantor, who was also removed. I can assure you that as long as I lived there the rent was paid every month....I take no responsibility for Ms Drummonds actions in regards to the matter and would like to be struck from the case.”

5. On 20 August 2020, the Applicant lodged an affidavit from Gareth Steven, a former employee of First Avenue Properties (Scotland) Ltd. In the affidavit he refers to the AT5 Notices lodged with the application and confirmed that he issued those to the Respondents and signed them. He also states “ I am clear that Stephen Hyslop and Michelle Drummond entered into a short assured tenancy in line with our style namely for a six month period and then on a month to month basis. I am aware that the previous tenant, Marie Keenan, signed a lease in exactly the same style. That lease came to an end on 2 August 2015. The rental in both the previous lease and the lease to Stephen Hyslop and Michelle Drummond was £650 per month. Stephen Hyslop and Michelle Drummond took on the tenancy at the end of Marie Keenan’s lease. I know that Stephen Hyslop and Michelle Drummond made payment of £650 per month to First Avenue in line with the lease. I don’t know when they stopped paying.” On 27 August 2020, the Applicant lodged a rent statement for the period 27 August 2017 until 27 February 20 showing that no payments of rent were received from February 2019. A letter from the Property Store dated 27 August 2020 also confirmed this.
6. The application called for a CMD by telephone conference call on 1 September 2020. The Applicant was represented by Mr Buchanan, solicitor. The Respondents did not participate and were not represented.

Case Management Discussion

7. Mr Buchanan advised that Ms Drummond remains in occupation of the property and has not paid rent since February 2019. As previously advised, at the CMD on 15 July 2020, Ms Drummond had notified him that she and Mr Hyslop were separated, and that he no longer resided at the property. However, the Applicant does not know when this occurred. They have no information to support the claim by Mr Hislop that he moved out over 2 years ago. There is a record of a telephone call from him when he stated that he had moved out, but it is undated. In any event, no written notice appears to have been received from him and a new tenancy agreement in the sole name of Ms Drummond has never been signed. As far as the Applicant is concerned, the tenancy which started on 27 August 2015, is continuing and it is a joint tenancy. Mr Buchanan confirmed that the Applicant seeks an order for possession in relation to both Respondents.

Findings in Fact

8. The Applicant is the owner and landlord of the property.
9. The Respondents are the tenants of the property in terms of a short assured tenancy agreement which started on 27 August 2015.

10. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 24 October 2019.

Reasons for Decision

11. The application was submitted with a style short assured tenancy agreement, AT5 Notices and Ground 2 Notices. The AT5 Notices are dated 27 August 2015. The ground 2 Notices state that the term of the tenancy is 27 August 2015 until 27 February 2016. The Ground 2 Notices incorporate declarations signed and dated by the Respondents, which confirm that both Notices have been received by them. The style tenancy agreement states that the tenancy will continue on a monthly basis after the initial 6 month term. The affidavit lodged by the Applicant, from a former employee of the letting agent who once acted for the Applicant, states that the style tenancy agreement lodged with the application is similar to the document signed by the Respondents. He confirms that they agreed to the tenancy continuing on a monthly basis after the initial term. He identifies the AT5 and Ground 2 Notices, which were also signed by him, as being the Notices issued to the Respondents before the tenancy agreement was signed.
12. 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.”
13. The Legal Member is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32 (1) of the 1988 Act. The Legal Member is also satisfied that AT5 Notices were given to the Respondents prior to the creation of the tenancy. 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.
14. The Legal Member considered the email sent to the Tribunal by the First Respondent. However, although the Applicant concedes that the first Respondent may have moved out of the property, there is no evidence to suggest that the joint tenancy has been replaced by a tenancy in the sole name of the Second Respondent. The First Respondent appears to have notified the letting agent that he was moving out, by telephone, but no formal notice was given. The Legal member is satisfied that the First Respondent is still a tenant of the property.
15. The Applicant served a Notice to Quit on the Respondents on 24 October 2019. This Notice calls upon the Respondents to vacate the property on 27 December 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.

16. 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 each Respondent, giving at least 2 months notice that the Applicant requires possession of the property.
17. 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

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

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.

Josephine Bonnar, Legal Member

1 September 2020

Josephine Bonnar

