

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/18/0016

Re: Property at 15 Cromarty Court, Livingston, West Lothian, EH54 5NE ("the Property")

Parties:

Hartfield Homes (Livingston) Limited, Pentland House, Damhead, Midlothian, EH10 7DP ("the Applicant")

Ms Rachel Clark, 15 Cromarty Court, Livingston, West Lothian, EH54 5NE ("the Respondent")

Tribunal Members:

Lesley Ward (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") having determined that the short assured tenancy has reached its end, tacit relocation is not operating and the Applicant has given notice to the Respondent that it requires possession of the house at 15 Cromarty Court Livingston West Lothian, EH54 5NE, makes an order for possession of the house in terms of section 33(1) of the Housing (Scotland) Act 1988.

This is case management discussion in connection with an application in terms of s33 of the Housing (Scotland) Act 1988 and rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, 'the Rules' for possession upon termination of a short assured tenancy. The application was made on behalf of Hartfield Homes (Livingston) Limited by Mr John McAdam of Caesar and Howie Solicitors and is dated 30 January 2018. The exact date that the application was received by the Tribunal is unclear.

Lesley Ward

There has been a procedural history in connection with this application. A first case management discussion took place on 3 May 2018 at which the respondent did not appear and was not represented. The tribunal granted the order sought and on the 18 June 2018 the tribunal set that decision aside after a review. There is no need to revisit the original decision or the review today, other than to note that the review was granted because two emails which were sent by the respondent to the Tribunal were not before the tribunal on 3 May 2018 when the first case management discussion took place. The application is before the tribunal afresh today.

The tribunal had before it the following copy documents:

1. Application dated 20 August 2018.
2. Tenancy agreement dated 20 July 2008.
3. AT5 dated 20 July 2008.
4. AT6 dated 10 April 2017.
5. Notice to quit dated 10 July 2017.
6. S33 notice dated 10 July 2017.
7. S11 notice.
8. Sheriff Officer's execution of service dated 23 July 2018,
9. Decision of the tribunal of 3 May 2018.
10. Notice of review dated 15 May 2018.
11. Decision of the tribunal of 18 June 2018.

Mr Joseph Carmichael of Hartfield Homes (Livingstone) Limited attended the hearing and was represented by Mr Alastair Laird solicitor of Thorley Stephenson Solicitors as local agent for Caesar and Howie. Ms Clark did not attend and was not represented.

Preliminary matters

1. The tribunal noted that the tenancy agreement and AT5 were both in the name of Rachel Clark and Shaun Clark whereas the application was in respect of Rachel Clark only. Mr Carmichael stated that his recollection was that Mr Clark was in the army and was away when the tenancy agreement was being signed. Mr Laird stated that in any event Mr Clark has since passed away.
2. The tribunal noted that the s33 notice and notice to quit are dated 10 July 2018. The tribunal adjourned to enable Mr Laird to make inquiries with his principal agents regarding the execution of service. When the tribunal reconvened Mr Laird advised that it is his understanding that both documents were served by sheriff officer and Miss Newbold, director of the Applicant confirmed this at the first case management discussion on 3 May 2018. When pressed by the tribunal today Mr Laird's position was that he understood that service had been carried out by sheriff officer and that the execution of service was not available for perusal.

Lesley Ward

3. The tribunal noted that the AT5 is dated 20 July 2008 and the lease was also signed on that date. The lease also has a clause to the effect that the AT5 form was received by the tenant before the lease was signed. Mr Carmichael explained that it was normal practice for his company to give tenants the AT5 before the lease was signed.
4. The tribunal was mindful of the procedural history of this case. The tribunal clerk made inquiries with the Tribunal Administration during the adjournment and no emails or telephone calls have been received from Ms Clark.

Findings in fact

1. The Applicant is the owner of the property.
2. The Applicant entered into a short assured tenancy with the Respondent on 20 July 2008 from 14 August 2008 until 13 February 2009 and thereafter from month to month with two months notice.
3. The Respondent received an AT5 notice on that date.
4. The Applicant served a valid notice to quit and valid s33 notice on the Respondent on to bring the tenancy to an end at the end of 14 September 2017.
5. The short assured tenancy has reached its end.
6. Tacit relocation is not operating.
7. No further contractual tenancy is in existence.

Reasons

The tribunal considered the documents lodged carefully. The tribunal is satisfied on the basis of the documents produced that the application is a valid one. The tribunal is satisfied that the Respondent knew about today's hearing. Sheriff Officer's served a copy of all relevant papers on the Respondent on 23 July 2017. Their letter of 24 July states "Mrs Clark advised our Officer that she was aware of everything and indicated that she will be attending the hearing".

The tribunal is satisfied that the grounds for possession are met. The tenancy is a short assured tenancy and a valid notice to quit and s33 notice have been served. The tenancy agreement entered into on 20 July 2008 was for the period 14 August 2008 until 13 February 2009. Thereafter clause 4 provides that the agreement will continue month to month and can be terminated by either party giving 2 months' notice. The end date referred to in the notice to quit and s33 notice is 14 September 2017.

In the absence of any evidence to the contrary the tribunal is satisfied that the terms of s33 of the Housing(Scotland) Act 1988 have been complied with.

The tribunal considered the Rules carefully and in particular rule 18. The tribunal is satisfied that there is sufficient information before it today to make an order for possession and that the procedure has been fair. The tribunal is satisfied that it

Lesley Ward

would not be contrary to the interests of the parties to do so. In line with the tribunal's overriding objective the tribunal granted the order sought.

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.

Lesley Ward

Lesley A Ward Legal Member

Date 16 August 2018