



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/EV/18/1210

Re: Property at 15 Connage Place, Ardersier, IV2 7UB (“the Property”)

Parties:

Highland NHT2 2012 LLP, 28 Queensgate, Inverness, IV1 1YN (“the Applicant”)

**Mr Charles Williams Watt, 15 Connage Place, Ardersier, IV2 7UB (“the
Respondent”)**

Tribunal Members:

Helen Forbes (Legal Member)

Decision:

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

• Background

1. The Applicant sought an order for possession of the Property in terms of section 33 of the Housing (Scotland) Act 1988.
2. The Tribunal had before it the following documents:
 - (i) Application dated 15th May 2018
 - (ii) Short Assured Tenancy Agreement between the parties dated 12th October 2017
 - (iii) Form AT5 dated 10th October and 12th October 2017
 - (iv) Form 33 dated 7th February 2018
 - (v) Notice to Quit dated 7th February 2018
 - (vi) Notice to Local Authority of Proceedings of Possession
 - (vii) Title Sheet INV32512
 - (viii) Royal Mail Recorded Delivery and Track and Trace information
 - (ix) Letter from the Respondent’s representative dated 30th July 2018

- **The Case Management Discussion**

3. The Applicant was represented at the Case Management Decision by Mr Angus Brown, Solicitor. Ms Claire Stoddart, Marketing and Lettings Officer for Highland Housing Alliance, and Mrs Gail Matheson, Chief Executive Officer of Highland Housing Alliance, and agent for the Applicant were also present. The Respondent was present, and represented by Ms Kathleen Cousins, SLAB Housekeeping Project Advisor, with Nairn Citizens Advice Bureau.

At this point, the Chair of the Tribunal considered that there may be a potential conflict of interest, in that she was personally acquainted with Mrs Matheson. Mrs Matheson indicated that she would leave if that was required. The Tribunal adjourned in order for the Chair to consider the position and make further enquiries.

Having considered the position, the Chair requested further information from Mr Brown as to Mrs Matheson's position within the Applicant's organisation and her pecuniary position. Mr Brown said that Mrs Matheson was employed and paid by the Highland Housing Alliance, and one of three members of that organisation representing the Applicant. There was no remuneration paid to her in respect of the work undertaken for the Applicant.

The Chair then explained the position to the Respondent and his representative, stating that she and Mrs Matheson had known each other for a long period, although they rarely met. The Chair had no knowledge of Mrs Matheson's employment and had not recognised her by her surname. The Chair explained that there was a potential conflict of interest and that, although she could assure the Respondent that her knowledge of Mrs Matheson would not lead to any bias in favour of the Applicant, the question was whether the Respondent could be satisfied that his case would be heard impartially. If the Respondent was not so satisfied, the Chair would recuse herself and the case would be heard by a different Chair. The Respondent was given time to discuss matters with his representative in private.

Having considered matters, the Respondent informed the Tribunal that he would prefer to continue with the Case Management Discussion today and that he was satisfied of a fair, unbiased hearing.

4. The Tribunal reconvened in the absence of Mrs Matheson. Mr Brown moved the Tribunal to grant the order as craved. The Respondent had not put forward any defence to the action. The Notice to Quit and the Form 33 had been served properly by Recorded Delivery. The Track and Trace showed that the letter had been signed for by 'Bethune N' on 8th February 2018. Mr Brown said he had no knowledge of who this person was or whether anyone else was resident at the Property. He submitted that it was for the Respondent to prove non-delivery of the notices. The lease

had been terminated on 11th May 2018, tacit relocation was not in operation and notice had been given.

5. The Respondent said that he had not signed for the Recorded Delivery letter. There was no one else living at the property and the postman had signed for the letter before putting it through his letterbox. He said he had offered to pay his arrears in February but was told by Ms Stoddart that there was nothing that could be done now that the Notice to Quit had been served. Ms Cousins said that, if the order was to be granted, the Respondent was asking for sufficient time to allow him to find another property.
6. In response, Mr Brown said that the Respondent had had more than sufficient time since the proceedings were raised in mid-May to find another property. As for the Recorded Delivery, the Respondent had confirmed that he received the letter. It was not relevant who had signed for the letter. Mr Brown referred to the Lands Tribunal case 'E.K. (Applicant) v The City of Edinburgh Council (Respondents)' which dealt with this matter. It was his position that a Recorded Delivery letter does not require to be signed for by the Respondent and that the Respondent did receive it.

- **Findings in Fact**

7. (i) The parties entered into a Short Assured Tenancy dated 12th October 2017. The initial term of the tenancy was to 11th April 2018 and monthly thereafter.

(ii) Notice to Quit and the section 33 notice dated 7th February 2018 were addressed to the Respondent and sent by Recorded Delivery. The Recorded Delivery letter was signed for by N Bethune and posted through the Respondent's letterbox on 8th February 2018. The Notice to Quit gave notice that the Respondent was required to remove on 11th May 2018.

(iii) The 11th May 2018 is an ish date of the tenancy. The Notice to Quit is valid and operates to terminate the contractual tenancy.

(iv) The Applicants have complied with the requirements of section 33(1) of the Housing (Scotland) Act 1988.

- **Reasons for Decision**

8. The Tribunal considered the matter relating to Recorded Delivery. The Tribunal considered that the requirement is that the notices be sent by Recorded Delivery. There is no stipulation that the Respondent must personally sign for the Recorded Delivery letter. The Respondent accepted that he had received the notices, notwithstanding that he had not signed for the letter. In all the circumstances, the Tribunal found that the service of the notices was valid. Given that the short assured tenancy has been terminated and that tacit relocation is not operating, and that the

requisite period of notice had been properly given, the Tribunal has no option but to grant the order sought.

- **Decision**

9. The Tribunal grants an order for possession.

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.

Helen Forbes

Legal Member/Chair

14th August 2018
Date