



**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/20/0087**

**Re: Property at 23 Rosewell Park, Aberdeen, AB15 6HT (“the Property”)**

**Parties:**

**Mr Terry Thomas, PO Box 37 Sax, 03630, Alicante, Spain (“the Applicant”)**

**Mr Bryon Wattie, Mrs Kathleen Wattie, 23 Rosewell Park, Aberdeen, AB15 6HT;  
23 Rosewell Park, Aberdeen, AB15 6HT (“the Respondents”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member)**

**Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**BACKGROUND**

1. By Lease dated 10 January 2014 the Applicant Let the property to Mr Bryon Wattie;
2. The Lease was for an initial period of 6 months, that being from 10 January 2014 until 9 July 2014
3. Prior to the execution of the Lease, a Notice in terms of Section 32 of the Housing (Scotland) Act 1988 (“the 1988 Act”) – commonly referred to as a Form AT5 - was served on Mr Bryon Wattie and signed by him;
4. On 3 September 2019 a Notice to Quit and a Notice in terms of Section 33 of the 1988 Act was served upon Mr Bryon Wattie. This was served by Sheriff

Officers. These Notices required Bryon Wattie to vacate the premises by 9 November 2019; ;

5. Mr Bryon Wattie contacted the Applicant's representatives, Stonehouse Lettings, and suggested that the lease was not, in fact, in his name and that the tenant of the property was, in fact, his wife, Kathleen Wattie. The implication was that he did not accept that the notices served upon him were valid as he was not the tenant;
6. Mr Bryon Wattie suggested, and maintained the suggestion throughout the entire proceedings, that the Lease in his name was, in fact, a forgery. That position was not and never has been accepted as accurate by the Applicant;
7. The Applicant's representatives thereafter sought advice from their professional organisations and, on the basis of the advice received, proceeded to serve a fresh Notice to Quit and a fresh Notice in terms of Section 33 of the 1988 Act upon Mr Bryon Wattie. In addition, however, they served similar Notices upon Mrs Kathleen Wattie. These Notices were served by Sheriff Officers on 28 October 2019 and required vacant possession as at 9 January 2020;
8. A notice in terms of s11 of the Homelessness etc. (Scotland) Act 2003 had been intimated to the local authority;
9. The Respondents remained in occupation of the property and, on 10<sup>th</sup> January 2020, the Applicant presented an application to the Tribunal seeking an Order for eviction;
10. A Case Management discussion was assigned for 18<sup>th</sup> March 2020. At that Case Management discussion the Respondents did not attend and an Order for eviction was granted;
11. The Respondents thereafter applied to the Tribunal for a recall of the decision dated 18<sup>th</sup> March 2020. The Tribunal, having considered the application to recall, allowed it and a further Case Management discussion as assigned for 2 September 2020. At that Case Management Discussion Mr Wattie intimated that he did not accept that he was the tenant, he maintained that the lease provided to the Tribunal by the Applicant's representatives was a forgery and that the lease was in the name of Kathleen Wattie;
12. The Tribunal assigned a Hearing to take place on 9<sup>th</sup> October 2020 to determine whether or not an Order for eviction should be granted;

## **THE HEARING**

13. The Hearing on 9<sup>th</sup> October 2020 was conducted by telephone conference. The Applicant was represented by Miss Lauren Cowling of Stonehouse Lettings. Mr Bryon Wattie participated in the Hearing. Mrs Kathleen Wattie,

was also present and indicated that Mr Bryon Wattie would represent her interests in the proceedings;

14. The Tribunal enquired at the outset as to the issue it was being requested to decide upon. The Tribunal was of the view that the application before it was for an Order for Eviction. Miss Cowling confirmed that, from the point of view of the Applicant, that is what was being requested of the Tribunal. Mr Wattie maintained that the Lease which had been produced by the Applicant was a forgery and, on that basis, the Tribunal ought not to grant an Order for Eviction;
15. The Tribunal pointed out that the Lease before it was a probative document. It was a Lease which had been signed and witnessed. It complied with the terms of the Requirements of Writings (Scotland) Act 1995. The Tribunal enquired of Mr Wattie as to any basis upon which he felt that it ought to be ignored? Mr Wattie advised that he denied that he was tenant. He maintained that the document was a forgery. He advised that he was having the document forensically examined. He made reference to having taken legal advice in relation to the matter and made comments about his Solicitor's views in relation to the document and its validity. He accepted, however, that there had been no application made to any Court to have the document reduced or set aside by any other legal procedure;
16. Notwithstanding that, the Tribunal enquired of Mr Wattie as to the factual position at present. He confirmed that he and his wife remained resident in the property. He confirmed that rent was being paid for the property. He accepted that, in the circumstances, there was a lease in existence. If the Lease was not between him and the Applicant, who was the tenant and on what basis was rent being paid? After previously having avoided answering the question as to whether or not his wife, Kathleen Wattie had signed a lease, he intimated that his wife was, indeed, the tenant of the property;
17. The Tribunal thereafter enquired of him as to why, even accepting his version of events (that being that the Lease was in his wife's name rather than his), the Tribunal should not grant an Order for Eviction given that a Notice to Quit and a Notice in terms of Section 33 of the 1988 Act had been served upon his wife? It should be borne in mind that his wife was party to the proceedings and was participating in the Hearing also. Mr Wattie intimated that the proceedings had been raised against him. The application was for an Eviction Order against him. He did not accept that that was a valid application because he was not the tenant. The Lease relied upon was a forgery and should not be relied upon;
18. Mr Wattie was unable to provide any explanation as to why there had been no application to reduce the lease if it was his view that it was a forgery. He intimated that the Tribunal had never advised him of his need to do that before. The Tribunal reminded him that it was not for the Tribunal to provide legal advice to people or to advise them how to conduct their cases but the Tribunal required to consider the law as it applied to the case when it was

dealing with it. He was of the view that the Tribunal had failed him because it had not told him of any need to take any steps to reduce the lease or have it set aside in any other legal way. Despite having intimated that to the Tribunal, he separately advised that he was having the lease forensically examined because it was a forgery. He had spoken of the legal advice he had taken in relation to the matter and of the legal advice he had received in relation to the validity of the Lease. That being so, the Tribunal pointed out to Mr Wattie that, while it is not for the Tribunal to provide legal advice, he clearly had been receiving legal advice from an early stage in these proceedings. That being so, why had no steps been taken to reduce the Lease? Again, he referred to the fact that he had not been advised that that was necessary;

19. The Tribunal pointed out that Notices had been served upon himself and his wife in the course of 2019, the proceedings had been raised before the Tribunal in January and, notwithstanding the “lockdown” caused by the coronavirus pandemic, there had been ample time for him to take any necessary steps to have a Court determine upon the authenticity of the lease document which was being relied upon. No satisfactory explanation for the failure to do so was provided;

20. The Tribunal was conscious of the terms of the application before it and the issues it had to determine. The Tribunal advised Mr Wattie that it was not for the Tribunal to determine that the Lease was a forgery. That would be a matter for the Courts. The Tribunal required to determine the matter on the basis of the probative documentation before it and the notices which had been intimated. There appeared to be no dispute about those (subject to what is noted at paragraph 21 below) and, that being so, the Tribunal determined that there was no requirement for it to hear any evidence in relation to the matter beyond the submissions which had already been made.

21. In relation to the Notices to Quit and the Notices in terms of section 33 of the 1988 Act served upon Mr Wattie and upon Kathleen Wattie, Mr Wattie made reference to the fact that the notices served upon him and his wife were different from one another. Upon seeking clarification of that submission, it became apparent that the only difference between the notices served upon himself and his wife was the person to whom the notices were addressed. The content of the notices beyond that were identical. Mr Wattie then began making reference to the Form AT5. That Form, of course, is of no relevance to the Notices to Quit and the Section 33 Notices referred to;

## **FINDINGS IN FACT**

22. The Tribunal found the following facts to be admitted or proved;
- i. By lease dated 10 January 2014 the Applicant let the property to Mr Bryon Wattie;
  - ii. The lease bore to be signed by Mr Bryon Wattie and was witnessed. In terms of the Requirements of Writing (Scotland) Act

- 1995 s3 it is presumed to have been subscribed by Mr Bryon Wattie;
- iii. The lease was for an initial period of 6 months, that being from 10 January 2014 until 9 July 2014;
  - iv. Prior to the execution of the Lease, a Notice in terms of Section 32 of the Housing (Scotland) Act 1988 (“the 1988 Act”) – commonly referred to as a Form AT5 - was served on Mr Bryon Wattie and signed by him;
  - v. On 3 September 2019 a Notice to Quit and a Notice in terms of Section 33 of the 1988 Act was served upon Mr Bryon Wattie. This was served by Sheriff Officers. These Notices required Bryon Wattie to vacate the premises by 9 November 2019;
  - vi. Mr Bryon Wattie contacted the Applicant’s representatives, Stonehouse Lettings, and suggested that the lease was not, in fact, in his name and that the tenant of the property was his wife, Kathleen Wattie. The implication was that he did not accept that the notices served upon him were valid as he was not the tenant;
  - vii. Mr Bryon Wattie suggested that the Lease in his name was, in fact, a forgery. That position was not and never has been accepted as accurate by the Applicant;
  - viii. The Applicant’s representatives thereafter sought advice from their professional organisations and, on the basis of the advice received, proceeded to serve a fresh Notice to Quit and a fresh Notice in terms of Section 33 of the 1988 Act upon Mr Bryon Wattie. In addition, however, they served similar Notices upon Mrs Kathleen Wattie. These Notices were served by Sheriff Officers on 28 October 2019 and required vacant possession as at 9 January 2020;
  - ix. A notice in terms of s11 of the Homelessness etc. (Scotland) Act 2003 had been intimated to the local authority
  - x. The Respondents remained in occupation of the property and, on 10<sup>th</sup> January 2020, the Applicant presented an application to the Tribunal seeking an Order for eviction;

## **REASONS FOR DECISION**

- 23. The decision of the Tribunal was unanimous;
- 24. The application to the Tribunal, on one view, was straight forward. The Tribunal was dealing with an application to terminate a short assured tenancy in accordance with the terms of Section 33 of the 1988 Act;
- 25. The Tribunal had before it, a Lease in the name of Mr Bryon Wattie, a Form AT5 which had been served prior to execution of the Lease, a Notice to Quit and a Notice in terms of Section 33 of the 1988 Act which had been timeously served upon Bryon Wattie and a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 which had been intimated to the Local Authority. That being so, the legal formalities required for an Order for eviction

in terms of Section 33 of the 1988 Act had been complied with and, in those circumstances, the Tribunal was obliged to grant an Order for Eviction;

26. Even on the basis of Mr Wattie's position, that being that the Lease was in his wife's name, the legal requirements to terminate that Lease had been complied with. The Applicant's agents had arranged for Sheriff Officers to serve a Notice to Quit and a Notice in terms of Section 33 of the 1988 Act upon Mrs Wattie and that had been done timeously and intimated upon her by Sheriff Officers. For the avoidance of any doubt, the Tribunal proceeded on the basis of the lease which was before it;
27. While Mr Wattie was clearly wishing the Tribunal to conclude that the lease was a forgery, that is not a decision the Tribunal could make. The Lease is a probative document. It has been signed and witnessed. It has been executed in accordance with the terms of the Requirements of Writing (Scotland) Act 1995. In the event that it is suggested that it is invalid in any way, it is for a Court, rather than this Tribunal, to declare such and to reduce the deed. That had not been done;
28. There was no information before the Tribunal, other than Mr Wattie's bald assertion that the lease was a forgery, to enable the Tribunal to reach such a conclusion in any event, even if it had power to do so. There was no information which would allow the Tribunal to disregard the presumption contained within s3 of the Requirements of Writing (Scotland) Act 1995;
29. Given the history of the case, the Tribunal did not consider it appropriate to adjourn the Hearing further to allow any proceedings to be taken in relation to reduction or setting aside of the lease document. Firstly, the Respondents had had ample time to raise such proceedings if so advised. Secondly, if it was the intention of the Respondents to pursue such a course there can be no certainty as to the likely timescales for the same. Thirdly, having regard to the overriding objectives to deal with cases fairly, justly and within a reasonable time, it is not appropriate to adjourn the case further for an uncertain period when no steps had been taken of that nature since the proceedings had been raised;

## **COMMENT**

30. Mr Wattie was clearly unhappy at the Decision of the Tribunal. He indicated that he would be appealing the decision. He questioned the reasons behind the Tribunal's decision. The Tribunal advised him that it had made its decision. It was not willing to engage in any further discussion at this stage in relation to the merits of the decision. It was, of course, his right to appeal the decision of the Tribunal if so advised and the Tribunal will consider the terms of any appeal if or when it is received.

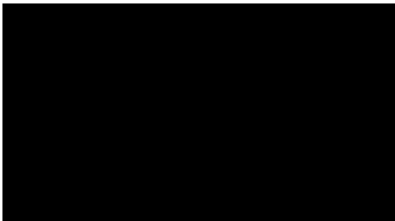
## **DECISION**

The Tribunal grants order to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property at 23 Rosewell Park, Aberdeen, AB15 6HT and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Order not to be executed prior to 12 noon on 23 November 2020

### **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.**



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**Legal Member: Virgil Crawford**

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**Date: 9 October 2020**