



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/20/1553

Re: Property at 99 Queens Crescent, Livingston, EH54 8EG (“the Property”)

Parties:

Mr George McIntosh, 4/6 Caledonian Crescent, Edinburgh, EH11 2DE (“the Applicant”)

Mr Ross Cunningham, 99 Queens Crescent, Livingston, EH54 8EG (“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 Applicant.

Background

1. By application dated 22 July 2020 the Applicant 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 Sheriff Officer certificate of service dated 3 February 2020 and copy 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 23 October 2020. Both parties were notified that a case management discussion (“CMD”) would take place by telephone

case conference on 25 November 2020 at 10am and that they were required to participate.

3. The case called for a CMD on 25 November 2020 at 10am The Applicant participated and was represented by Ms Roman, solicitor. The Respondent participated in person. A related application under Chamber reference CV/20/1566 also called.

Case Management Discussion

4. Ms Roman advised the Legal Member that the Applicant seeks an order for possession of the property in terms of Section 33 of the 1988 Act. Mr Cunningham advised that he is currently on a waiting list with the Local Authority and hopes to be re-housed by them. He confirmed that the tenancy agreement and AT5 notice lodged by the Applicant relate to his tenancy which started in 2015. He stated that he had been sent Notices by email by the Applicant. The Council told him that these were not valid. The Applicant then sent further Notices which he understands are valid. He confirmed that these were delivered to the property by Sheriff Officer. Ms Roman advised that the Applicant had issued notices to the Respondent himself. When he became aware that there was an issue with them, he instructed her firm to deal with matters and the Notices lodged with the application were then served.

Findings in Fact

5. The Applicant is the owner and landlord of the property.
6. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
7. The Respondent served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 3 February 2020.
8. The Respondent remains in occupation of the property

Reasons for Decision

9. The application was submitted with a short assured tenancy agreement and AT5 Notice. Both are signed by the Respondent and dated 2 August 2015. A declaration at the end of the AT5 states, "In signing this declaration I acknowledge that I have been given a copy of the preceding attached pages known as form AT5 and understand that the tenancy being offered by you is a short assured tenancy under Section 32 of the Housing (Scotland) Act 1988. I further declare that this form was issued to me in advance of signing the tenancy agreement". The term of the tenancy is stated to be 5 August 2015 until 4 August 2016 and, if not ended by either party, it is to continue on a

monthly basis until terminated by either party. Clause 30 of the agreement states that the tenant acknowledges that he has received Form AT5 before the creation of the tenancy.

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 notes that the tenancy agreement specifies an initial term of 12 months, and therefore meets the requirements of Section 32(1) of the 1988 Act. The Legal Member also notes that the agreement and AT5 were signed on the same date. In both documents the Respondent acknowledges receipt of the AT5 before signing the agreement itself. 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 3 February 2020. This Notice calls upon the Respondent to vacate the property on 4 April 2020, which is 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 ish; (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 ish 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 at least 2 months notice that the Applicant requires possession of the property. The Applicant has also complied with Section 19A of the 1988 Act by sending a notice to the Local authority in terms of Section 11 Homelessness etc (Scotland) Act 2003.

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.

J. B

Josephine Bonnar, Legal Member

25 November 2020