



**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/21/2391**

**Re: Property at 18 South Parks Road, Glenrothes, KY6 1BJ (“the Property”)**

**Parties:**

**Mrs Angela Wallace, 35D Main Street, Springfield, KY15 5SQ (“the Applicant”)**

**Ms Toni Watterson, 18 South Parks Road, Glenrothes, KY6 1BJ (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.**

- Background
  1. An application was submitted to the Tribunal under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondent upon termination of a short assured tenancy agreement.
- The Case Management Discussion
  2. A Case Management Discussion (“CMD”) took place on 20 January 2022. The Applicant was personally present and represented by her letting agent, Ms Young of Rockford Properties. The Respondent was personally present and represented by her partner, Michael Wallace.
  3. The Applicant's position was that the property was let to the Respondent on a Short Assured Tenancy commencing 1 May 2017 with a rental charge of £450

per month. The AT5 document, although not signed by the Respondent, was given to the Respondent with a copy of the tenancy agreement at the time. The required notices had been served as stated in the documents. The Applicant was now in financial hardship due to the lack of rent payments over a prolonged time and wished to sell the property.

4. Mr Wallace and the Respondent stated that there was no tenancy as nothing was ever signed. No AT5 document was given to the Respondent. If anything there were discussions and an agreement between the Applicant and Mr Wallace for him to move in and do work in the property so it would eventually be sold with a profit. This had nothing to do with the Respondent. She was not the tenant. Only Mr Wallace has anything to do with this. The Respondent lives with him at the property. The signature on the tenancy agreement is not hers.
5. The following facts were agreed between the parties:
  - (i) The Applicant is the owner of the property
  - (ii) The Respondent lives in the property
  - (iii) It is her only home
  - (iv) She lives there with Mr Wallace, who is the son of the Applicant
  - (v) Some payments in connection with the occupation of the property have been made by the Respondent to the Applicant from the Respondent's own bank account
  - (vi) On 30 March 2021 the Applicant served on the Respondent a Notice to Quit and a S 33 Notice, both to the date of 1 October 2021. The rent statement from 1 April 2021 to 4 January 2022 correctly show the payments made by Universal Credit in relation to the property.
  - (vii) The intention of the Applicant to sell the property eventually was known to the Respondent and Mr Wallace.
6. The following matters require to be decided:
  - (i) Did the Applicant and the Respondent enter into a Short Assured Tenancy over the property, which would require that form AT5 was served prior to the commencement of the relevant tenancy
  - (ii) If so, is 1 October 2021 an ish date for said Short Assured Tenancy
  - (iii) If so, is it reasonable to grant the order in all the circumstances
- The Hearing
7. A Hearing took place on 21 March 2022 by tele-conference. The Applicant was personally present and represented by her letting agent, Ms Young of Rockford Properties. The Respondent was personally present and represented by her partner, Michael Wallace. The Applicant did not give evidence at the Hearing and instead wished the Tribunal to take her written submissions as her evidence in the Hearing. The Applicant called one witness, Alan Wallace (the Applicant's husband.)

- The Applicant's evidence
8. The Applicant's representative made submissions regarding the three points requiring to be determined (as referred to in the CMD and at paragraph 6 above.)
  9. In relation to the question of whether the parties had entered into a Short Assured Tenancy over the Property, it was submitted that a Form AT5 had been served on the Respondent (dated 1 May 2017) and thereafter a Short Assured Tenancy Agreement ("the Agreement") was signed on the same date. Copies of both documents were lodged. The parties were present when the Agreement was signed, along with Alan Wallace (the Applicant's husband and father of Michael Wallace) and Michael Wallace. The Tribunal was referred to a document entitled "MAT B1" which it was submitted showed a signature by the Respondent which matched that on the Agreement. Alan Wallace witnessed both the signatures of the Applicant and the Respondent on the Agreement.
  10. A number of text messages were referred to, as follows:
    - (i) Text message from Respondent to Applicant dated 16 January 2021 saying *"I still want the notice because you have made me out to be a liar and continued lying about me."*
    - (ii) Text message from Michael Wallace to Applicant dated 15 December 2020 saying *"send the notice, we will go to the council with ot (sic)"*
    - (iii) Text message from Michael Wallace to Applicant dated 16 January 2021 saying *"...need the notice in both our names and 6 months since your selling it"*
    - (iv) Text message from Michael Wallace to Applicant dated 16 January 2021 saying *"The tenancy is in tonis name so it is she who will get the notice. If that's what she wants. And she said she does"* and further *"You rented it to both of us, her name for the legal reasons u said."*
    - (v) Text message from Michael Wallace to Applicant dated 16 January 2021 saying *"...we have no contract and u rent out to family against the law I'm sure?"*
    - (vi) Text message from Michael Wallace to Applicant (undated) saying *"Our application to the council has been paused as they want more information on me and you if we are related. The housing officer has said I'm recorded as a tenant via the council and electoral role. She said our application could be seen as fraudulent as tonis the only one on the tenancy."*
  11. An email was referred to from Michael Wallace to the Applicant's representative dated 26 March 2021 saying *"I request that you not contact my partner anymore, the tenancy for this property is in my name not hers, she has only been put as the tenant to satisfy my mother."*
  12. It was submitted that the Respondent and her partner have flitted back and forth as to whether or not the tenancy agreement is in the Respondent's name or not. The text messages and emails make reference to the tenancy agreement being in the Respondent's sole name and it is on that basis that the application has been raised.

13. It was submitted that the ish date of the tenancy is the 1<sup>st</sup> October 2021. The Agreement commenced 1 May 2017 and ran for an initial period to 1 November 2017 and monthly thereafter. The notices were served to coincide with the 1<sup>st</sup> of the month and are accordingly valid. The notices were signed for at the Property on 30 March 2021 and the Royal Mail track and trace proof of service was lodged.
  14. It was submitted that it is reasonable for the order to be granted. The landlord wishes to sell the Property. The Respondent has failed to pay rent and has accrued considerable rent arrears. A separate application by the Applicant seeking a payment order against the Respondent under Rule 70 of the Rules in respect of rent arrears and under case reference FTS/HPC/CV/21/1054 was heard on 8 September 2021 and a decision issued in that application, granting an order for payment against the Respondent, on 13 September 2021. The Respondent has failed to allow access to the Property and an order has been sought from the Tribunal for access in order to be able to carry out the annual gas safety check.
  15. Alan Wallace gave evidence for the Applicant. Mr Wallace is the husband of the Applicant and father of Michael Wallace, the Respondent's partner. Mr Wallace gave evidence that he was present when the Agreement was signed. He could not recall the exact date that this took place and that his wife, the Applicant, had prepared the Agreement. He recalled that his wife had asked him to come into another room in order to witness the signing of the agreement. He confirmed that the only people present were him, his wife, his son (Michael Wallace) and the Respondent. Mr Wallace witnessed both the Respondent and the Applicant each sign the Agreement, and he signed himself as a witness to both signatures.
  16. Mr Wallace gave evidence that the Respondent and her partner (his son) had been residing in a flat previously, and it was in a bad condition. The Property was purchased by his wife with a view to works being carried out in it whilst his son and the Respondent lived there.
  17. Mr Wallace gave evidence that he and his wife wanted the tenancy agreement to be in the Respondent's sole name so that it gave her and their grandson some security, should there be any relationship issues with his son in the future. There had been no discussion at the time of signing the Agreement regarding Michael Wallace not being named on the Agreement. Alan Wallace took no role in the ongoing management of the tenancy. Whilst he visited the Property from time to time to see the grandchildren, he had no other involvement in the Agreement.
- The Respondent's evidence
18. The Respondent submitted that the signature on the Agreement was not the Respondent's. The MAT B1 form was referred to. It was submitted that the proposed "signature" on that form was not the signature of the Respondent,

but rather was her name which she had written in capital letters. On the other side her name had been inserted by the midwife, again in block capitals. Reference was made to photographs of bank cards belonging to the Respondent and which had been lodged by the Respondent showing her signature. It was submitted that the signatures on the cards did not match that on the Agreement.

19. The Respondent submitted that no Form AT5 was served, and no Agreement was signed by her. This had been an informal arrangement between family members, and no formal lease was intended. It was submitted that had there been a legitimate tenancy agreement in place, the Respondent would have raised formal proceedings against the Applicant for her failure to maintain the Property satisfactorily. There had been a verbal agreement between the Applicant and Michael Wallace that the Property would be purchased for them to live in. He would assist in carrying out works to the Property, with a view to the Property being sold and there being a share of the profit given to Michael Wallace to assist him with a deposit to buy a property himself thereafter. There had been no agreement between the Applicant and the Respondent for her to be a tenant.
20. Reference was made to text messages between the Applicant and her son, Michael Wallace, where the Applicant sought payment of rent from him:
  - (i) dated 7 December 2017 saying "*Fid (sic) you pay rent?*"
  - (ii) dated 9 February 2018 saying "*Rent???*"
  - (iii) dated 7 May 2020 saying "*Can u pay the rent?*"
  - (iv) dated 10 September 2020 saying "*Don't like chasing you for rent. Get better at it...*"
21. It was submitted that the Applicant should not have chased her son for payment of rent if the Respondent had indeed been the sole tenant. She should have chased her instead, which she did not do. It was submitted that the signature on the Agreement had been forged.
22. The Respondent submitted that she had not known that the Applicant was purchasing the Property. The Applicant collected her and her son and took them to the Rollos solicitor's office in Glenrothes where she collected keys and presented them to her as the keys for her new house. She was then driven straight there. This happened on 28 April 2017. She knew the date because she had taken a photo of her son with the keys. Michael Wallace was not there at that point, but he came the next day when they removed carpets. They moved in after a few days. The Applicant thereafter got an electrician round to rewire the Property. It had been agreed that £450 per month would be payable to the Applicant each month. This was to be paid to her account with the payment reference "rent" so that the Applicant could distinguish it amongst other payments going into that account. This would cover the mortgage payments. There had not been any discussion that the rent liability would solely be the Respondent's.
23. Mr Wallace, the Respondent's partner, submitted that there had been a family fallout in or around October 2020 This was partly due to there having not been

sufficient work done in the Property. They had been only supposed to live there for 12-18 months until the work was done and the Property could be sold again at a profit, but they have been in the property for around four years now. It was only after that argument that the Applicant told him that the tenancy agreement had been put in the Respondent's sole name. He submitted that his mother had been angry and said that this was done for "legal reasons." His reference to this in his text messages was simply relaying what his mother had said to him. He did not agree that the tenancy agreement was in the Respondent's sole name. He submitted that he and the Respondent wanted to move out of the Property as the relationship with his mother had deteriorated. The council told him that if the landlord gave a Notice to Quit that would give them extra points on the housing register. The first time that he or the Respondent had seen the Agreement, was when the Tribunal application was served on the Respondent. They had requested a copy of the Agreement prior to then and this was not provided to them. The Applicant had not maintained the Property appropriately, and had failed in her legal duties as regards safety certificates, including gas safety and legionella risk assessments.

- Findings in Fact

24. The Tribunal made the following findings in fact:

- (i) The parties entered into a Short Assured Tenancy Agreement ("the Agreement") which commenced 1 May 2017. The Agreement stated that the start date was 1 May 2017 and the end date was 1 November 2017. Thereafter, if the Agreement is not brought to an end by either party it will run on a monthly basis until ended by either party;
- (ii) A Notice to Quit and notice under section 33 of the 1988 Act were served on the Respondent on 30 March 2021 by recorded delivery post;
- (iii) The Notice to Quit and notice under section 33 of the 1988 Act required the Respondent to remove from the Property by 1 October 2021;
- (iv) The Respondent had failed to remove from the Property and continued to reside therein.

- Reasons for Decision

25. It was clear to the Tribunal that there had been a relationship breakdown within the family, and in particular between the Applicant and her son. Whilst this was unfortunate, this was not relevant to the question of whether or not there was a tenancy agreement in existence, and if so, who the parties to that agreement were.

26. No explanation was given as to why the Applicant chose not to give evidence herself at the Hearing. However, the Tribunal found the Applicant's witness, Alan Wallace, to be both reliable and credible in his evidence. He was clear, concise, and was honest when unable to answer particular questions asked of him. His evidence was clear that there were four people present at the time of signing the Agreement (both of the parties, Alan Wallace and Michael Wallace) and that he had witnessed both the Applicant and the Respondent each sign the Agreement.

27. The Respondent's evidence was that there had never been any intention of entering into a formal leasing arrangement and this was to be an informal arrangement within the family. There had been an agreed monthly payment of rent, but that she had not signed the Agreement and that her signature on said document was forged. She lodged photographs of bank cards and their signature strips to show that her signature differed to that on the Agreement. Her name in block capitals on the MAT B1 form was written by her and she submitted was not the same as the name on the Agreement. The signature on the Agreement was in block capitals. Her signature on the back of the bank cards showed lower case and cursive handwriting. The signatures between the bank cards and the Agreement do indeed differ. However, the Tribunal did not consider there were substantial differences between the block capital name written by the Respondent on the MAT B1 form and the block capital signature on the Agreement. Signatures can change over time. The signatures on the back of the cards had differences between them. The Tribunal clearly did not have the benefit of evidence from a handwriting expert, nor are the Tribunal members experts themselves. However, the Tribunal was not persuaded that, on a balance of probabilities, the signature on the Agreement was not inserted by the Respondent.
28. By the Respondent's own admission, there had been agreement for monthly payments of £450 to be paid to the Applicant for their occupation in the Property. Whether or not they agreed to call this "rent" (albeit there was evidence that this was what the payments had been noted as in the payment reference to the Applicant's bank account), an agreement between parties to pay an agreed amount for occupancy of a property could be construed as a rental payment and thus create a tenancy, whether in writing or not.
29. There had been payments of rent made by each of the Respondent and her partner. Bank statements lodged by the Applicant showed payments of rent being made by "T Watterson" with the reference "rent." There were 28 such payments between 7 December 2017 and February 2019 when the statements ended. There was one payment showing on said statements from Michael Wallace with "rent" as the reference, on 7 February 2019. A further spreadsheet lodged show that after that date, payments from both Michael Wallace and the Respondent were made in respect of rent. The Tribunal was not persuaded that payments being made by Michael Wallace would bring sufficient doubt as to who the tenant actually was. The Applicant would be entitled to accept payment of rent from her son, who occupied the property, on behalf of the tenant.
30. The Respondent in her evidence stated that the Applicant by chasing Michael Wallace for the rent, rather than the Respondent., had shown in doing so, that the tenant was in fact Michael Wallace. The Tribunal was not persuaded by this argument. The family connections between the parties and the clear breakdown in their relationships creates added difficulties. The Tribunal did not consider it unusual that the Applicant would have communications with her son regarding a tenancy over a Property he is living in with his partner, even if he is not named on the Agreement itself. It could be recognised that the Applicant

may have felt more comfortable chasing her son for unpaid rent, as opposed to chasing her son's partner. Her son was of course not unconnected here, in that he did also occupy the Property. It was also noted that the Respondent herself had asked the Applicant's representative to take matters up with Michael rather than her. Tenants are entitled to nominate an agent to speak on their behalf with a landlord and letting agent. Doing so does not remove their own liabilities under any contractual agreement.

31. The Tribunal noted that there had been text messages sent by Michael Wallace to the Applicant in which he had referred to the tenancy agreement being in the Respondent's name. Mr Wallace stated that this was following a family argument and he was just relaying what his mother had said. The Tribunal was not persuaded by this. Mr Wallace had said in text messages and emails that the tenancy agreement is in the Respondent's name. However, he has also said in a text message of 16 January 2021 that the tenancy agreement was in both names. This does not then tie in with the position put forward in evidence by both him and the Respondent that the intention of the parties was for the agreement to be between the Applicant and Michael Wallace only. The Tribunal was not satisfied as to the credibility or reliability of the evidence of either the Respondent or Michael Wallace in this regard.
32. Reference was made in the Respondent's evidence (and also by Michael Wallace) that there had been repairing issues in the Property. The Respondent stated in her evidence that had there been a "legitimate tenancy" then the Applicant would have carried out repairs. It was proposed that as repairs had not been carried out, there was no such "legitimate tenancy." In reality this isn't the case. There are many instances of perfectly competent contractual tenancies between landlord and tenants where landlords fail to carry out repairs. Whether or not there are outstanding repairs, does not affect the legality or otherwise of a tenancy agreement in place between a landlord and tenant. It simply indicates a breach of a particular clause of that tenancy agreement, or breach of statutory obligation.
33. The Tribunal was satisfied from the evidence before it, that the Form AT5 had been served and the Agreement signed by the parties. The Agreement commenced 1 May 2017 and ran to 1 November 2017 and monthly thereafter. Accordingly, the Tribunal was satisfied that the notices were served competently and with the correct ish date. The Tribunal was satisfied that the terms of section 33 of the 1988 Act had been met: namely that the tenancy had reached its ish; tacit relocation was not operating; a notice had been served in terms of that section giving at least six months' notice; and no further contractual tenancy was in existence. The Tribunal was also satisfied that in all of the circumstances, it was reasonable to grant the Order. There were significant rent arrears which had accrued during the tenancy and for which an Order for Payment had previously been granted by a differently constituted Tribunal. Further, the Respondent had failed to allow access to the Property to enable safety inspections to be carried out, with no reasonable basis for refusal. It was noted that the Respondent had already made enquiries with the local authority for rehousing. Accordingly, the Applicant was entitled to the Order for Repossession as sought.



- Decision

34. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

### **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.**

Fiona Watson

**Legal Member/Chair**

**Date: 22 March 2022**