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/20/1234

Re: Property at 1 Peacock Court, Edinburgh, EH6 4HZ ("the Property")

Parties:

Mrs Julianne Sharples nee O'Brien, 9 Camptoun Holding, North Berwick, EH39 5BA ("the Applicant")

Ms Keara Murphy, 1 Peacock Court, Edinburgh, EH6 4HZ ("the Respondent")

Tribunal Members:

Fiona Watson (Legal Member) and Mary Lyden (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 dated 19 May 2020 was lodged under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") seeking an Order for Repossession of a Short Assured Tenancy.

2. A Case Management Discussion ("CMD") took place on 1 October 2020 by tele-conference. The Applicant was personally present and represented by Mrs Mullen, Solicitor. The Applicant's letting agent, Ms Smith of Arden Property Management, was also present. The Respondent was personally present and represented by Mr Wilson of CHAI.

3. By letter of 24 August 2020 the Tribunal notified the Applicant that whilst the application had been accepted to proceed to a tribunal for determination, submissions would require to be made at the CMD as regards the validity of the Notice to Quit, and in particular the Notice to Quit not complying with the requirements of the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 ("the 1988 Regulations").

4. The Applicant moved for the Order for Repossession to be granted as sought. It was submitted on behalf of the Applicant that whilst it was accepted that the Notice to Quit did not comply with the said 1988 Regulations, the errors were not sufficiently serious as to invalidate the Notice to Quit.

5. Mr Wilson for the Respondent submitted that Notices to Quit required absolute precision and to ensure protection of tenants, the tribunal should not allow an error in a notice to be allowed. The CMD was adjourned and a Hearing fixed in order for legal arguments to be made by parties as to the validity of the Notice to Quit and the extent to which the Tribunal could allow a Notice to Quit which contains errors to be allowed as a basis for granting a repossession order.

- The Hearing

6. A Hearing took place on 12 November 2020 by tele-conference. The Applicant was personally present and represented by Mrs Mullen, Solicitor. The Applicant's husband, Mr Christopher Sharples, was also present. The Applicant's letting agent, Ms Smith of Arden Property Management, was also present. The Respondent was personally present and represented by Mr Wilson of CHAI.

7. A separate application submitted under Rule 70 of the Rules was also heard, under case reference FTS/HPC/CV/20/1235.

8. The Applicant moved for the order for repossession to be granted on the basis that the errors in the Notice to Quit were of a minor nature and therefore did not render the notice invalid.

9. In terms of the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and the subsequent First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019, a Notice to Quit must contain the following prescribed information:

"1. Even after the Notice to Quit has run out, before the tenant can lawfully be evicted, the landlord must get an order for possession from the First-tier Tribunal for Scotland Housing and Property Chamber.

2. If a landlord issues a Notice to Quit but does not seek to gain possession of the house in question the contractual assured tenancy which has been terminated will be replaced by a statutory assured tenancy. In such circumstances the landlord may propose new terms for the tenancy and may seek an adjustment in rent at annual intervals thereafter.

3. If a tenant does not know what kind of tenancy he has or is otherwise unsure of his rights he can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the Legal Aid legislation. A tenant can also seek help from a Citizens Advice Bureau or Housing Advisory Centre."

10. The Notice to Quit served on the Respondent was headed "*Notice of Removal under Section 37 of the Sheriff Courts (Scotland) Act 1907."* Thereafter, it contained the following three paragraphs:

"1. Even after the Notice of Removal has run out, before the tenant can lawfully be evicted, the landlord must get an order for possession from the Court.

2. If a landlord issues a Notice of Removal but does not seek to gain possession of the house in question the contractual assured tenancy which has been terminated will be replaced by a statutory assured tenancy. In such circumstances the landlord may propose new terms for the tenancy and may seek an adjustment in rent at annual intervals thereafter.

3. If a tenant does not know what kind of tenancy he has or is otherwise unsure of his rights he can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the Legal Aid legislation. A tenant can also seek help from a Citizens Advice Bureau or Housing Advisory Centre"

11. The words "*notice of removal*" were used instead of "*Notice to Quit*" in paragraphs one and two, and "*court*" instead of "*First-tier Tribunal for Scotland Housing and Property Chamber"* in paragraph two.

12. The Applicant accepted that the wording used in the three paragraphs in the Notice did not exactly replicate the wording as required in the said 1988 and the said 2019 Regulations. However, it was submitted that this was a minor error and did not render the Notice to Quit invalid. The case of *Ravenseft Properties Limited v Hall [2002] HLR 33* was referred to. This case from the English Court of Appeal concerned the issue of an error in an English private tenancy notice. It was held that a purposive approach should be taken, and consideration should be made as to whether or not the recipient of the notice would have been misled by the error, or left in any reasonable doubt as to the effect of the notice. It was submitted by the Applicant that the Tribunal should ask whether or not the Notice in question had achieved its purpose, and would the purpose and intention of the notice have been clear to the Respondent upon receiving it. It was submitted that the notice was sufficiently clear and on that basis, was a valid notice. The terms "notice of removal" and "notice to quit" are interchangeable. Their meaning is the same. The Notice was clear in that the Respondent could not be removed from the property without an order, and whether that order is from the court or the first-tier tribunal, the effect would be the same to the Respondent. The Respondent had remained in the property and the service of the notice had not encouraged her to vacate. It was submitted on that basis that she clearly knew from the notice having been served that the Applicant wished her to remove for the property, and that she couldn't be removed without an order.

13. The Applicant referred to the case of Gaul v Gilchrist under case reference FTS/HPC/EV/18/2964. This case dealt with the issue of the validity of a Form AT6 in terms of section 19 of the 1988 Act. In this case, the Form AT6 failed to

state the date upon which arrears had accrued. The Tribunal was satisfied that sufficient particulars were given in that notice to tell the Respondent how the grounds relied upon therein had been made out. On that basis, it was deemed to be clear to the Respondent upon reading the notice as to the intention of the notice. It was submitted that the Tribunal in this case adopted a purposive approach and that this showed a history of the Tribunal taking such an approach in relation to errors in statutory prescribed information in a notice. The Tribunal was invited by the Applicant to find that the Notice to Quit was valid.

14. It was accepted by the Respondent that no authorities had been lodged to support the position taken by the Respondent that any error, however minor in its nature, would render a Notice to Quit to be invalid. It was submitted that the fact that no authorities could be found on this issue supported the Respondent's positon and showed how important an issue this was. The Respondent took the view that historically, where an issue arose as to an error in a notice, a solicitor would advise a landlord to serve new notices.

15. It was submitted that the powers afforded to a landlord under section 33 of the 1988 Act were so strongly in favour of the landlord, that on balance to the tenant it is a requirement that there be strict accuracy in a Notice to Quit.

16. The Respondent referred to the case of MJL Investments Ltd v Allan Hales, case reference FTS/HPC/EV/1178. In this case, the application was rejected at the sifting stage. The Notice to Quit being relied upon in that application did not contain either of paragraphs 1 and 3 of the prescribed information referred to in the said 1988 and 2019 Regulations. The absence of said information was held to render the Notice to Quit invalid, and the application was rejected on that basis as being frivolous, misconceived and having no prospect of success in terms of Rule 8(1)(a) of the Rules. The case of TCIB Residential LLPO t/a Newkeylets v Slawomir Biernacki under case reference FTS/HPC/EV/19/2467 was also referred to. This was again a case where the application was rejected under Rule 8(1)(a). The Notice to Quit firstly referred to the wrong ish date, and secondly, paragraph two of the prescribed information referred to in the said 1988 and 2019 Regulations was missing entirely.

17. The Tribunal was invited by the Respondent to find that the Notice to Quit was invalid due to the error in the wording of the Notice.

- Findings in Fact

18. The Tribunal made the following findings in fact:

(i) The parties entered into a Short Assured Tenancy Agreement ("the Agreement") which commenced 12 December 2014. The Agreement stated that the start date was 12 December 2014 and the end date was 12 June 2015. Thereafter, if the Agreement is not brought to an end by either party it will run on a monthly basis until ended by ether party;
(ii) A Notice to Quit and notice under section 33 of the 1988 Act were served on the Respondent on 5 March 2020;
(iii) The Notice to Quit and notice under section 33 of the 1988 Act required the Respondent to remove from the Property by 12 May 2020;
(iv) The Respondent had failed to remove from the Property and continued to reside therein.
(v) The Applicant was entitled to the Order for Repossession as sought.

- Reasons for Decision

19. The Tribunal considered the authorities referred to by the parties, and was not persuaded by the Respondent's submissions that the error in the wording of the Notice rendered it invalid.

20. No authorities had been lodged by the Respondent to support the view that any error, howsoever minor, must render a Notice to Quit invalid. Of those authorities referred to by the Respondent, the issues in those cases referred to an entire absence of sections of the prescribed information in the Notices being considered, rather than an error in certain wording used, as is the issue here. If the issue here had been one of an absence of prescribed information entirely, the Tribunal may have taken a differing view. However, the Tribunal was persuaded by the approach taken in the said case of Ravenseft Properties Ltd v Hall, and the purposive approach taken when considering an error in a Notice

being a practical and sensible approach to take. The Tribunal was satisfied that the error contained within the Notice to Quit issued by the Applicant was a minor error, and was not one which altered the intention or effect of the Notice. In addressing the Tribunal, the Respondent confirmed that it was clear to her what the intention of the Notice to Quit was, and that she was being asked to remove from the property by the specified date. There did not appear to be any doubt or ambiguity on the part of the Respondent as to the intention or effect of the Notice to Quit served on her. There was no submission made that the error in the wording had resulted in the Respondent being misled, or left in any doubt as to the intention or effect of the Notice. The respondent confirmed that upon receipt of the Notice she had commenced looking for alternative accommodation. She was clearly aware that the intention of the Notice was for her to remove from the property, failing which an Order for her removal would be sought. There had been no prejudice caused to the Respondent by the error in the wording used in the Notice. The Tribunal was therefore satisfied that the Notice to Quit was valid and could be relied upon by the Applicant.

21. 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 2 months' notice; and no further contractual tenancy was in existence. Accordingly, the Applicant was entitled to the Order for Repossession as sought.

- Decision

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: 12 November 2020**