



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/21/0272

Re: Property at Flat 0/2, 7 Langside Road, Glasgow, G42 7AQ (“the Property”)

Parties:

KPM Estates Limited, 54 - 58 Athol Street, Douglas, IM1 1JD, Isle of Man (“the Applicant”)

Mr Jamial Hasan, Flat 0/2, 7 Langside Road, Glasgow, G42 7AQ (“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 received on 4 February 2021, the Applicant seeks an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) A tenancy agreement, AT5 notice, copy Notice to Quit, Section 33 Notice and Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 were lodged in support of the application.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 19 March 2021. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 21 April 2021 at 11.30 am and that they were required to participate. Both were provided with a telephone number and passcode.
3. The CMD took place by telephone conference call on 21 April 2021 at 11.30am. The Applicant was represented by Ms Morrison, solicitor. The Respondent did

not participate and was not represented. He did not lodge any written representations in advance of the CMD.

Case Management Discussion

4. Ms Morrison advised the Legal Member that there has been no contact with the Respondent but that he is still in occupation of the property. The Legal Member noted that the Applicants have submitted a copy of the short assured tenancy agreement and AT5 notice. A copy of a Notice to Quit and Section 33 Notice have also been lodged, together with a post office receipt with tracking number dated 20 December 2020. The Legal Member noted that the Notice to Quit (and covering letter addressed to the Respondent) are dated 20 November 2020 while the Section 33 Notice and post office receipt are dated 20 December 2020. Ms Morrison advised that this is probably a typographical error in the letters and that she has been advised by the Letting Agents, who served the notices on behalf of the Applicant, that both Notices and the covering letter were issued together by recorded delivery on 20 December 2020. The Legal Member also noted that the Applicants have been unable to provide a track and trace report for the recorded delivery service of the documents. The Royal Mail Website has been unable to provide any information about delivery. The Applicants have submitted an email from the Respondent, as evidence that he received the notices. This email is dated 27 January 2021 and appears to be in response to an email from the letting agent dated 24 January 2021. The Respondent's email states "Today I have got this quit notice after the email you sent me".
5. Ms Morrison advised the Legal Member that she believes that the Royal Mail web site is unable to provide tracking details for the notices due to the time which has elapsed. She confirmed that the issue of service had been raised with the letting agents. They have no record of carrying out a track and trace. However, they were able to confirm that the recorded delivery letter with the notices was not returned to their office by Royal Mail. Ms Morrison also advised that the Applicants could offer no explanation for the Respondents reference to receiving the notices "today", ie on 27 January 2021. Even allowing for the delays at Christmas, this seems an inordinate delay between sending and delivery. The Respondent himself has provided no further details. Ms Morrison submitted that the Applicants had complied with the requirements of the legislation by issuing the notices by a method specified in the legislation, and on a date which provided the Respondent with the required periods of notice. She confirmed that an order for possession is sought.

Findings in Fact

6. The Applicant is the owner and landlord of the property.
7. The Respondent is the tenant of the property in terms of a short assured tenancy agreement which started on 1 April 2011.

8. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 20 December 2020.

Reasons for Decision

9. The application was submitted with a short assured tenancy agreement and AT5 Notice. The term of the tenancy 1 April 2011 until 1 October 2011 with a provision that it continues on a month to month basis thereafter. The AT5 Notice is signed and dated by the Respondent, on the same date but 15 minutes before the tenancy agreement was signed.
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 is satisfied that the tenancy agreement between the parties was for an initial term of 6 months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Legal Member is also satisfied that AT5 Notice was given to the Respondent prior to the creation of the tenancy. In the circumstances, the Legal Member is satisfied that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
12. From the documents submitted with the application, and the information provided at the CMD by the Applicant’s solicitor, the Legal Member is satisfied that the Applicant’s letting agent sent the Notice to Quit and Section 33 Notice to the Respondent on 20 December 2020, by recorded delivery post. Although tracking information has not been provided (and does not appear to be available) the notices were not returned to the letting agent by Royal Mail. Had the letter not been delivered (or collected by the Respondent from the post office if he had not been home), the letter ought to have been returned to the sender. There is some uncertainty about when the Respondent actually received the Notices. His email suggests that he did not do so until 27 January 2021. Whether this is because there was a delay in delivery or (as is more likely) a delay in him collecting it from the post office has not been established. The Applicants have no information about this, and the Respondent has not provided any information. In the circumstances, the Legal Member is satisfied that the Applicants are entitled to rely on the service by the agents by recorded delivery post on 20 December 2020. By posting on this date, the Applicants allowed a reasonable time for delivery while still providing the Respondent with 2 months notice in relation to the Section 33 Notice and 28 days for the Notice to Quit.

13. The Legal Member notes that the Notice to Quit calls upon the Respondent to vacate the property on 1 March 2021, being an ish date. It contains the information prescribed by the Assured tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and 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.
14. 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.
15. 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

16. The Legal Member determines that an order for possession of the property should be granted against the Respondents.

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.


Josephine Bonnar, Legal Member

21 April 2021