

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 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/18/2457

Re: Property at 2 Sunderland Farm Cottages, Galashiels, TD1 3PH (“the Property”)

Parties:

Mr Robert Smyly, The Garden House, Sunderland Hall, Galashiels, TD1 3PG (“the Applicant”)

Mr Cedric Dove, 2 Sunderland Farm Cottages, Galashiels, TD1 3PH (“the Respondent”)

Tribunal Members:

Colin Dunipace (Legal Member) and Frances Wood (Ordinary Member)

Decision

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

This Application called before the Tribunal for a Hearing on 8 February 2019 in Langlee Community Centre, Galashiels. Mr Robert Smyly (hereinafter the Applicant) was not present but was represented by Mr Sebastian Janus of Messrs Cullen Kilshaw, Solicitors. Mr Cedric Dove (hereinafter the Respondent) was present and was assisted by his friend Ms Ann-Marie Gass.

Background

1. By way of background it was noted that entered into a Short Assured Tenancy agreement in respect of the property known as and forming 2 Sunderland Farm Cottages, Galashiels, TD1 3PH on 7 August 2017. By way of Application on 20 September 2018 the Applicant sought an order for

possession of the property under Rule 66 of the First-tier Tribunal for Scotland and Property Chamber (Procedure) Regulations 2016 on the basis that the Short Assured Tenancy Agreement between the parties had come to an end. In support of their application the Applicant provided the Tribunal with a copy of the tenancy agreement, Notice to Quit, Section 11 Notice in terms of the Homelessness etc (Scotland) Act 2003, Form AT6 and Certificate of Intimation by Sheriff Officer. The basis of the Application was that a Notice to Quit had been served on the Respondent on 8 June 2018 requiring that the Respondent leave the premises by 14 August 2018. The Applicant indicated that as the Respondent had not removed himself from the premises by that date that the Application was necessary. The Application had been accepted by the Tribunal on 8 October 2018, and called initially as a Case Management Discussion on 13 November 2018 when the Applicant was represented by his solicitor. The Respondent was not present at that time but had contacted the Tribunal in advance indicating that he would not be present as his carer was unable to attend to assist him in relation to the presentation of his case. In these circumstances the Case Management Discussion was continued until 21 December 2018 for a further Case Management Discussion.

2. At the continued Case Management Discussion the Applicant was represented by his solicitor and the Respondent was present with his carer Ms Ann-Marie Gass. At that time the Applicant's representative moved that the Application be granted on the basis that the Short Assured Tenancy had come to an end on 14 August 2018. The Respondent indicated that his understanding was that notwithstanding the Notice to Quit having been served on him that he understood that this had been superseded by further discussions between himself and the Applicant in July 2018 when he stated that he had been advised by the Applicant that the tenancy was to continue. The Applicant also made reference to the fact that he had continued to pay rent in advance and that he had made rental payments until February 2019. The Respondent advised that these payments had been taken by the Applicant and that these had not been returned. Given the fact that there appeared to be a factual dispute between the parties in relation to the potential continuation of the tenancy a full Hearing was fixed for 8 February 2019.

The Hearing

3. The Application called as a full Hearing on 8 February 2019. At this Hearing the Applicant was again not present but was represented the aforementioned Mr Janus. The Respondent was present accompanied by Ms Gass. As a preliminary matter the Respondent indicated that he wished to represent himself as he had been unable to obtain legal representation, albeit he indicated that he had obtained some advice in relation to this matter from the

voluntary sector. The Respondent also indicated that he wished to lodge various documentation which he wished to be received by the Tribunal. This documentation consisted of various email correspondence and a number of photographs. This documentation had been submitted by the Respondent on 7 and 8 February 2019. The Respondent indicated that he wished this documentation to be considered by the Tribunal, which motion was opposed by the Applicant's solicitor on the basis that the Respondent had not complied with the previous direction that this documentation had not been lodged 21 days prior to the Hearings required by the previous Direction issued at the Case Management Discussion of 21 December 2018. In response the Respondent indicated that he had not been able to lodge this evidence timeously due to the fact that he had no access to computer equipment and due to difficulties with his internet connection. In the circumstances it was decided that the evidence would be admitted.

4. In support of the Application the Applicant's solicitor indicated that he sought the Order for possession on the basis that this was an eviction action and that the evidence lodged by the Respondent was not relevant to the essential essence of the Application. The Applicant's solicitor indicated that the tenancy had been a Short Assured Tenancy, and that the Notice to Quit had been served on the Respondent on 8 June 2018 requiring that he remove himself from the property by 14 August 2018. The Applicant's solicitor indicated that in these circumstances that the Applicant was entitled to the Order as sought. The Applicant's solicitor stated that the Notice to Quit had been served by Sheriff Officer on 8 June 2018, stating that the Respondent was to remove himself from the property. The solicitor also made reference to an email from the Applicant to the Respondent dated 21 June 2018 when the Applicant stated that the lease was to end on 14 August 2018. Whilst the Applicant accepted that he had received a number of rental payments from the Respondent after that date, but indicated that these payments were due as the Respondent had continued to reside within the property. The Applicant's solicitor also indicated that he disputed that there had been any discussion with the Respondent during the course of which it had been indicated that he was prepared to allow the tenancy to continue after 14 August 2018. Whilst the Applicant had contacted the Respondent requesting payment of rent, that this was due to the fact that the Respondent was still in arrears of rent throughout the period of his tenancy. In this regard the solicitor indicated that there was an ongoing obligation on the Respondent to continue to pay rent as long as he remained within the property, and that the Applicant was entitled to the Order as sought given the service of the Notice to Quit. The solicitor advised that there was no question of tacit relocation as the Applicant had made clear that the Respondent was to remove himself from the premises.

5. The Respondent made submissions on his own behalf and stated that he had been in the property since viewing it in 2017. The Respondent advised that he had wished to reside in the property to enable him to live there and to build a workshop. The Respondent also indicated that he wished to reside in the property for reasons of security. By way of background the Respondent advised that he was an ex-service man and that he suffered from Post-Traumatic Stress Disorder. The Respondent advised that he was extremely pleased with the property and that he had undertaken a number of improvements thereto, and that he had also contacted a number of agencies with a view to obtaining grants to undertake further repairs. The Respondent advised that he accepted that the Notice to Quit had been served upon him, but that he had continued to reside there and to pay rent for the property. The Respondent advised that there had been a meeting between him and the Applicant on 13 August 2018 when the Applicant had attended at the property unannounced. The Respondent advised that this visit had taken him by surprise, and that he had been frightened by the appearance of the Applicant. The Respondent advised that there had been a discussion about drainage at the property and that following an argument that the Respondent physically chased the Applicant from the property. The Respondent advised that he had requested a three year lease from the Applicant but that there had been no definitive answer from the Applicant in this regard. The Respondent advised that he felt that the Notice to Quit had simply been served to frighten him, but he understood that the lease might continue. As a result he had continued to make rental payments. The Respondent also made reference to the fact that he had been undertaking improvements to the property and expressed concerns about aspects of the property, especially in relation to the drainage. The Respondent stated that he felt extremely disappointed as he had done everything required of him in relation to the tenancy.

Findings in Fact

1. The parties entered in a Short Assured Tenancy in relation to the property at No 2 Sunderland Farm Cottages, Galashiels, TD1 3PH on 7 August 2017. The period of the lease was from the period from 14 August 2017 for a term of six months and was subject to two month's written notice of termination. The lease continued on a monthly basis from 14 February 2018 on a monthly basis.
2. A Notice to Quit was served on the Respondent on 8 June 2018 stating that the lease was to end on 14 August 2018 and that the Respondent was required to remove himself from the property by that date.

3. The contractual Short Assured Tenancy ended on 14 August 2018 by reason of the service upon the Respondent of the valid Notice to Quit.
4. The respondent did not remove himself from the property on 14 August 2018 but continued to reside within the property. The Respondent continued to make payments of rent to the Applicant in respect of his continued residence within the property.

Findings in Fact and Law

1. The Applicant is entitled to recover possession of the property from the Respondent.

Reasons for Decision & Decision

The Applicant was not present at the Hearing but was represented at this Hearing by his solicitor. The Respondent was present and represented himself. It was a matter of agreement between the parties that the Property was subject to a Short Assured Tenancy from 14 August 2017, and that this was initially for a period of six months, thereafter renewable on a monthly basis. It was also not in dispute that the Applicant had served a valid Notice to Quit on the Respondent on 8 June 2018 terminating the lease on 14 August 2018. The issue which was before this Tribunal was whether the Applicant had entered into an agreement with the Respondent whereby he had advised him that notwithstanding the service of the Notice to Quit that the lease was to continue indefinitely. This factual position was disputed by the Applicant. In support of his position the Respondent made reference to a purported discussion between himself and the Applicant in June 2018, after the service of the Notice to Quit in which he had stated that his lease was to continue. In particular the Respondent made reference to a discussion between the parties on 13 August 2018 when the Applicant had attended at the property. Having explored this matter further with the Respondent, he indicated that he accepted that the discussion between the parties on that date had been terse at best given the Respondent's assertion that he had been taken by surprise by the appearance of the Applicant at the property. The Respondent indicated in his evidence that there had been an argument between the parties about the physical condition of the property, and that at the conclusion of this that he had chased the Applicant from the property. Having clarified the factual position with the Respondent there appeared to be nothing in his evidence which would support his assertion that there had been an agreement reached whereby the lease would be extended. Indeed given the evidence of the Respondent it would appear that the Applicant had made clear that he wished him to remove from the property on 14 August 2018. It was accepted that the Respondent had continued to

pay rent in respect of the property, but it was also clear that this rental only covered the period of his actual tenancy within the property. Accordingly the respondent had been unable to establish the factual position as stated by him and as such the Applicant was entitled to the Order as sought. The Order is accordingly made.

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.

C Dunipace

Legal Chair

Date

8/2/19