

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/18/2105

Re: Property at 3/12 Kingsknowe Court, Edinburgh, EH14 2JT (“the Property”)

Parties:

Mrs Donna Thompson, 44 Dolphin Gardens West, Currie, EH14 5RE (“the Applicant”)

Ms Carrie Jansch, 3/12 Kingsknowe Court, Edinburgh, EH14 2JT (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

This is an application in terms of S33 of the Housing (Scotland) Act 1988 for a possession order in respect of the property at 3/12 Kingsknowe Court Edinburgh EH14 2JT.

The application had been discussed at a Case Management Discussion previously and the Applicant had been asked to address certain issues in respect of the tenancy agreement in advance of the Hearing.

These issues related to the validity of the agreement in respect of the fact that the applicant is not named on the tenancy agreement and that one of the owners of the property had not entered into the tenancy agreement. A further issue was raised in respect of the validity of the Notice to Quit and Notice under Section 33 of the 1988 Act.

The Applicant had submitted a bundle of papers seeking to address these issues in advance of the Hearing complying with a Notice of Direction issued after the Case Management Discussion.

The Respondent was not present at the Hearing and the Applicant sought to proceed in her absence in terms of the Tribunal rules. The Tribunal had papers which confirmed intimation on the Respondent of the date of the Hearing and was prepared to proceed in the absence of the Respondent in terms of Rule 29 of the Tribunal Rules.

The Respondent gave evidence to the Tribunal to the effect that a Mr McMeechan had acted on her behalf in letting out the property owned by her and her husband. She had lodged a letter in the bundle of papers dated 12 November 2018 from Mr McMeechan confirming this. The Tribunal sought further information as to what Mr McMeechan had advised the tenant at the time the agreement was signed as to the identity of the landlord. The Applicant had obtained an email from Mr McMeechan which was lodged and this indicated that the Respondent was aware that Mr McMeechan was an agent on her behalf. Mr McMeechan had signed the tenancy agreement and AT5 in respect of the agreement.

The Applicant also advised the Tribunal that she had taken over as point of contact for the tenant in 2015 and then dealt directly with the Respondent who knew she was the landlord. The Applicant advised that she was the registered landlord and her name was on the Tenancy Deposit scheme papers. The Tribunal had sight of copies of text messages passing between the parties on the subject of the tenancy agreement.

The Applicant is a co-owner of the property with her husband who gave evidence to the Tribunal to that effect. He advised that he was aware that the Applicant was renting the property out and had his permission to do this and he had been present when the agent Mr McMeechan had been engaged to act.

The Applicant had herself served a notice to Quit and Notice in terms of Section 33 of the Housing (Scotland) Act 1988 by putting these through the door of the property on 17th January 2018 as it appeared to her that the Respondent was not in at the time. These notices appeared to have been served timeously and in the correct form.

Findings In Fact

The Applicant entered into a tenancy agreement with the Respondent on 18th March 2013. This was entered on her behalf by Mr Gregor McMeechan acting as her agent at the time. It was known to the Respondent when she signed the agreement that he was an agent and not the landlord.

The tenancy created is a short assured tenancy agreement in terms of section 33 of the Housing (Scotland) Act 1988.

On 17th January 2018 the Applicant served a valid Notice to Quit and Notice in terms of section 33 of the 1988 Act on the Respondent by putting the appropriate papers through the letterbox at the property. The Respondent has acknowledged receipt of these papers.

Decision

The Tribunal grants a possession order in respect of the Property in favour of the Applicant.

Reasons for Decision

The Tribunal was satisfied that this was a short assured tenancy in respect of the Housing (Scotland) Act 1988 and the terms of Section 33 of the Act had been complied with so the Applicant is entitled to a possession order in respect of the property.

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.

Ms Valerie Bremner

Legal Member/Chair

14 / 12 / 18 .

Date