



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.**

Case reference FTS/HPC/RS/20/2618

**Parties**

**Ms Caroline Hallas (Applicant)**

**Mr Polly Boake, Mr Ernest Boakye (Respondents)**

**1st Lets Ltd (Applicant's Representative)**

**Flat 0/3 1 Hamiltonhill Gardens, Glasgow, G22 5PR (House)**

**Tribunal Member: Jacqui Taylor (Legal Member)**

The Applicant's representative sent the Tribunal two applications AT3(L) and AT2 with covering letter dated 14<sup>th</sup> December 2020. In support of the applications they sent the following documents:

- (i) Short Assured Tenancy Agreement dated 17<sup>th</sup> February 2017 for the period 17<sup>th</sup> February 2017 to 17<sup>th</sup> August 2017.
- (ii) AT5
- (iii) Inventory
- (iv) Notice to Quit dated 17<sup>th</sup> February 2017, giving the Tenants notice that the lease would terminate on 17<sup>th</sup> August 2017.

Considering the AT3(L) and AT2 applications in turn:

**(First) AT3(L) ( under section 17(3) Housing (Scotland) Act 1988).**

Section 17 provides as follows:

***'17. Fixing of terms of statutory assured tenancy.***

*(1) In this section, in relation to a statutory assured tenancy "the former tenancy" means the tenancy on the termination of which the statutory assured tenancy arises.*

*(2)Not later than the first anniversary of the termination of the former tenancy, the landlord may serve on the tenant, or the tenant may serve on the landlord, a notice in the prescribed form—*

*(a)proposing terms of the statutory assured tenancy other than as to the amount of the rent different from those which have effect by virtue of section 16(1)(b) above; and*

*(b)proposing, if appropriate, an adjustment of the rent to take account of the proposed terms.*

*(3)Where a notice has been served under subsection (2) above—*

*(a)within the period of three months beginning on the date on which the notice was served on him, the landlord or the tenant, as the case may be, may refer the notice to the First-tier Tribunal under subsection (4) below in the prescribed form; and*

*(b)if the notice is not so referred, then, with effect from such date, not falling within the period of three months referred to in paragraph (a) above, as may be specified in the notice, the terms proposed in the notice shall become terms of the tenancy in substitution for any other terms dealing with the same subject matter and the amount of the rent shall be varied in accordance with any adjustment so proposed.'*

The Notice to Quit was in the following terms:

'We 1<sup>st</sup> lets (UK) Ltd, the Landlord(s) Agents hereby give you notice to quit the above subjects on 17<sup>th</sup> August 2017 being the expiry of the Short Assured Tenancy entered into between you and the Landlord/Agent on 17<sup>th</sup> February 2017.'

The statutory information required in terms of the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) (Regulations) 1988 had not been provided. Consequently the Tribunal consider the Notice to Quit to be invalid.

Accordingly the Tribunal reject the AT3 application as the Notice to Quit is invalid and consequently the tenancy is not a statutory assured tenancy.

**(Second) AT2 (under section 24(1) Housing (Scotland) Act 1988).**

Section 24 provides:

***'24Increases of rent under assured tenancies.***

*(1)For the purpose of securing an increase in the rent under a statutory assured tenancy, the landlord may serve on the tenant a notice in the prescribed form proposing a new rent to take effect—*

*(a)if the tenancy was at the time of service of the notice a contractual tenancy (whether or not renewed by operation of tacit relocation), immediately after its termination; or*

*(b)if the tenancy was at the time of service of the notice not such a contractual tenancy, at any time during the tenancy,*

*but not earlier than the expiry of the minimum period after the date of service of the notice.*

*(2)The minimum period referred to in subsection (1) above is except in a case where section 25A applies—*

*(a)if the assured tenancy is for 6 months or more, 6 months;*

*(b)if the assured tenancy is for less than 6 months, the duration of the tenancy or one month (whichever is the longer) and in any case to which section 25A applies, one month.*

*(3)Where a notice is served under subsection (1) above, a new rent specified in the notice shall take effect as mentioned in the notice unless, before the beginning of the period to which the new rent relates—*

*(a)the tenant refers the notice to the First-tier Tribunal in the prescribed form; or*

*(b)the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied.’*

As explained above, the Notice to Quit is invalid and consequently the tenancy is not a statutory assured tenancy. Accordingly the Tribunal reject the AT2 application as the lease is not a statutory assured tenancy.

In the whole circumstances the Tribunal have good reason to believe that it would not be appropriate to accept the application and reject the application in terms of rule 8 (1)(c) of the Tribunal Rules.

**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**

# J Taylor

Legal Member

Date: 13<sup>th</sup> January 2021