

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 ("the 1988 Act") and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules")

Chamber Ref: FTS/HPC/EV/19/2510

Re: Property at Eastertown House, Sandilands, Lanarkshire, ML11 9TX
("the Property")

Parties:

OCCW (Broken Cross) Limited, a Company incorporated under the Companies Acts (registered Number 8588368) having a place of business at West Terrace, Esh Winning, Durham, DH7 9PT
("the Applicant")

CMS Cameron McKenna Nabarro Olswang LLP, Saltire Court, 20 Castle Terrace, Edinburgh, EH1 2EN
("the Applicant's Representative")

Mrs Mary Thomson, Eastertown House, Sandilands, Lanarkshire, ML11 9TX
("the Respondent")

Tribunal Members:

Susanne L M Tanner Q.C. (Legal Member)

Decision (in absence of Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") (i) was satisfied in terms of Section 33 of the 1988 Act that the short assured tenancy for the Property has reached its end; tacit relocation is not operating; no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and the Applicants have given to the Respondents two months' notice stating that they require possession of the house; (ii) made an order for possession in terms of Section 33 of the 1988 Act

Statement of Reasons

1. The Applicant's Representative made an application to the tribunal on 8 August 2019 in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicant seeks the Respondent's eviction from the Property under Section 33 of the 1988 Act (possession on termination of a short assured tenancy).
3. The Applicant lodged:
 - 3.1. a copy of a Short Assured Tenancy agreement between British Coal Opencast, Scottish Region, 160 Glasgow Road, Edinburgh, EH12 8LT and the Respondent for the Property (signed on behalf of both parties but undated);
 - 3.2. a copy of an AT5 Notice to the Respondent signed on behalf of the landlord and the Respondent, dated 28 February 1994;
 - 3.3. Copy of a notice to the Respondent under Section 33(1)(d) of the 1988 Act, dated 12 March 2019, notifying the Respondent that the Applicant required possession of the Property as at 28 May 2019; and
 - 3.4. Copy of a Notice to Quit dated 12 March 2019, notifying the Respondent that she was required to remove from the Property with effect from 28 May 2019.
4. On 13 August 2019, the tribunal obtained the Title Sheet for the Property which shows that the Applicant has been the registered proprietor of the Property since 22 July 2013.
5. On 23 August 2019, the tribunal requested further information from the Applicant's representative, namely:
 - 5.1. A copy of the section 11 Notice sent to the Local authority;
 - 5.2. Proof of service of the Section 33 notice and Notice to Quit; and
 - 5.3. Confirmation of the Landlord's registration number.
6. On 3 September 2019, the Applicant's Representative produced:
 - 6.1. A copy of a Section 11 notice intimated to South Lanarkshire Council on 3 September 2019;

- 6.2. Royal Mail confirmation of proof of service of the Notice to Quit and Section 33 Notice dated 14 March 2019; and
- 6.3. Companies House information in respect of the Applicant and a printout of landlord registration information for the Property. The Applicant's Representative stated that the Property had been registered on the Scottish Land Register by Hargreaves Land Limited. Hargreaves Land Limited holds the controlling interest in the Applicant, one of its group companies; and that the Applicant had obtained the landlord's interest in the Property.
7. On 18 September 2019, the Application was accepted for determination by the tribunal and a Case Management Discussion ("CMD") was fixed for 30 October 2019 at 1400h at Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT
8. On 25 September 2019 parties were notified by letter of the date, time and place of the CMD and told that they were required to attend. Parties were also advised in the same letter that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the Application, which may involve making or refusing an eviction order. If parties do not attend the CMD this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Respondent was afforded the opportunity to return written representations to the tribunal's offices by 16 October 2019.
9. The Application paperwork and notification of the date, time and place of the CMD was served on the Respondents on 25 September 2019.
10. The Respondent submitted written representations dated 9 October 2019. A copy was sent to the Applicant's Representative.
11. A CMD took place on 30 October 2019. Miss Love, solicitor, from the Applicant's Representative was present on behalf of the Applicant. The Respondent was present. Reference is made to the Notes of the CMD which were sent to parties by letter of 4 November 2019. The CMD was adjourned until 3 December 2019, to allow the Respondent additional time to conclude a purchase of a new property and make arrangements to remove from the Property.
12. On 6 November 2019, the parties were notified by letter of the date, time and place of the adjourned CMD and told that they were required to attend. Parties were also advised in the same letter that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the Application, which may involve making or refusing an eviction order. If parties do not attend the CMD this will not

stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

13. Case Management Discussion (“CMD”): 3 December 2019 at 1400 at Glasgow Tribunals Centre, Room 109

13.1. Mr Jennifer Love, Solicitor from the Applicant’s Representative attended on behalf of the Applicant.

13.2. The Respondent did not appear or make any contact with the tribunal’s administration. The Respondent had been notified of the date, time and place of the adjourned CMD, at the CMD on 30 October 2019, and again by letter of 6 November 2019. The clerk of the tribunal confirmed with the tribunal’s administration that there had been no contact from the Respondent prior to or on the morning of the CMD. The tribunal chair waited until 1015h and the Respondent did not appear.

13.3. The tribunal was satisfied that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the party present and all the material before it, in terms of Rule 29 of the 2017 Rules.

13.4. The tribunal chair indicated to Ms Love that there was the possibility of the Respondent applying for recall of any decision of the tribunal because the tribunal made the decision in absence, because that party did not take part in proceedings, failed to appear or be represented at a hearing, in terms of Rule 30 of the 2017 Rules; and that any such Application would have to be in writing, in time and state why it was in the interests of justice for the decision to be recalled.

13.5. Ms Love advised the tribunal that at the previous CMD, the Respondent had produced a letter from Dallas McMillan which stated that confirmation still required to be obtained and the Respondent had stated that she anticipated that that would be done within four weeks. Since the last CMD, Ms Love has written to Dallas McMillan, solicitors, who were dealing with the purchase of the Respondent’s new property, requesting an update. She has received no response from Dallas McMillan. The Applicant advised Ms Love on the day prior to the adjourned CMD (on 2 December 2019) that the neighbour of the Property had contacted the Applicant to advise that there had been a lot of boxes in the Property and that the Respondent appeared to be moving out. A representative of the Applicant telephoned the Respondent on 2 December 2019 and spoke to her. During the conversation the Respondent stated that

she would hand in the keys to the Property to the Lanark branch of the Applicant that day. The keys have not been handed in to the Applicant's office on 2 December or the morning of 3 December 2019. The Applicant stated that the Respondent has not picked up calls on her telephone on the morning of 3 December 2019 (prior to the CMD).

13.6. Oral Submissions on behalf of the Applicant

13.7. The tribunal chair asked Ms Love about the Applicant's title and interest. Ms Love stated that the Scottish Coal Company Limited went into liquidation in May 2013. The land was then sold to the Applicant. The Applicant is a subsidiary of the Scottish Coal Company Limited. The Applicant became the registered proprietor of the Property on 22 July 2013. Hargreaves Land Limited, West Terrace, Esh Winning, Durham, England, DH7 9PT was then given an option to purchase the Applicant as part of the assets of Scottish Coal Limited. Hargreaves Land Limited exercised that option to purchase in January 2017. Hargreaves Land Limited continues to be the parent company. Hargreaves Land Limited is shown as having 75% or more of the shares of the Applicant. Hargreaves Land Limited is named on the landlord register as the landlord of the Property. The Applicant is the landlord of the Property.

13.8. The tribunal chair asked Ms Love what her position was in terms of the date of the Short Assured Tenancy Agreement, as the date is missing at the head of the agreement and there is no date next to the signatures of the landlord's officer or the Respondent on the last page. Ms Love accepted that the date was missing from the agreement. She stated that the date of entry was 1 March 1994. The AT5 was signed by the same representative of the Applicant's predecessor in title and by the Respondent on 28 February 1994. Ms Love stated that in the Respondent's written representations and at the previous CMD, the Respondent had stated that she had been in occupation of the Property for 25 years. The Respondent did not challenge that the AT5 was signed before the lease or that it was a valid short assured tenancy. Ms Love invited the tribunal to infer that the lease was signed on 28 February 1994, after the AT5 was signed, and that it was a valid short assured tenancy.

13.9. In relation to the ish date, Ms Love stated that the tenancy agreement provides that the date of entry to the Property was 1 March 1994 and the original date of termination was specified as 28 February 1995. Paragraph 3 provides that "*thereafter at the discretion of the landlord the let shall continue on a monthly basis until two months' written notice of termination is given by one party to the other*". It was submitted on behalf of the Applicants that the tenancy had reached its ish on 28 May 2019 as it had continued by tacit

relocation on a month to month basis from then, until terminated with the service of a valid notice to quit and Section 33 notice date 12 March 2019 (and served on 14 March 2019, notifying the Respondent that the Applicant required vacant possession of the Property as at 28 May 2019 and that the Respondent was required to remove from the property on or before 28 May 2019. Said notices were served at least two months before possession of the house was required. The Application to the tribunal was made within the period of 6 months from the date of service of the notices.

13.10. The section 11 Notice was emailed to the relevant Council on 3 September 2019.

14. The tribunal makes the following findings-in-fact:

14.1. There was a short assured tenancy between the Applicant's predecessor in title and the Respondent for the initial period 1 March 1994 to 28 February 1995.

14.2. Thereafter the tenancy continued by tacit relocation on a monthly basis.

14.3. The Applicant has been the registered proprietor of the Property since 22 July 2013.

14.4. The Applicant became the landlord of the Respondent after the Property was purchased from the Applicant's predecessor.

14.5. The short assured tenancy reached its end on 28 May 2019 by service on behalf of the Applicant on the Respondent, on 14 March 2019, of a Notice to quit dated 12 March 2019, notifying the Respondent that the tenancy would reach its termination date as at 28 May 2019.

14.6. Tacit relocation is no longer operating;

14.7. No further contractual tenancy is for the time being in existence.

14.8. A Section 33 notice was served on behalf of the Applicant on the Respondents on 14 March 2019, notifying the Respondent that the Applicant required vacant possession as at 28 May 2019.

14.9. The Applicant has given to the Respondent at least two months' notice stating that they require possession of the Property.

14.10. The Application to the tribunal was made on 8 August 2019 which is within the period of 6 months from the date of service of the notices.

14.11. A Section 11 notice has been sent to the local authority.

15. Findings in Fact and Law

15.1. The tribunal is satisfied that the requirements of Section 33 of the 1988 Act are met and therefore must make an order for possession 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.

Susanne L M Tanner Q.C.
Legal Member/Chair

3 December 2019