



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”)

Chamber Ref: FTS/HPC/EV/23/1652

Re: Property at 32 Earls Court, Alloa, Clackmannanshire, FK10 1BZ (“the Property”)

Parties:

Mrs Margaret-Ann Drummond, 17 Beveridge Place, Kinross, Fife, KY13 8QY (“the Applicant”)

Ms Jacqueline McKee, Mr Allan Spence (SBA), 32 Earls Court, Alloa, Clackmannanshire, FK10 1BZ; UNKNOWN, UNKNOWN (“the Respondents”)

Tribunal Members:

Alastair Houston (Legal Member) and Janine Green (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession be granted in favour of the Applicant

1. Background

1.1 This is an application under rule 66 of the Chamber Rules whereby the Applicant seeks an order for recovery of possession in respect of the property on the basis that it was let on a short assured tenancy which had been terminated.

1.2 The application was accompanied by copies of the written tenancy agreement between the parties, the notice to quit and notice in terms of section 33 of the 1988 Act given to the Respondents. A previous Case Management Discussion had taken place on 30 October 2023. This had been adjourned to a further Case Management Discussion for two reasons. Firstly, as had been raised at the sift of the application, the tenancy agreement also named a Mr Allan Spence as joint tenant in addition to the

Respondent. He was also named on the notice to quit and section 33 notice. The Tribunal considered that, as he remained party to the tenancy agreement, he ought to be party to the present application and it required to be intimated upon him, which had been carried out through advertisement.

1.3 Secondly, the Tribunal noted that the written tenancy agreement specified the initial period of let as commencing on 26 May 2017 and ending on 25 November 2017, with the tenancy thereafter continuing on a month to month basis until terminated. The notice to quit specified an ish date of 25 May 2023. The Tribunal wished further submissions as to whether the initial period of let could therefore be considered to be six months, as was required by section 33(1)(a) of the 1988 Act, to create a short assured tenancy and the validity of the notice to quit which specified 25 May 2023. These had been received from the Applicant.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 2 February 2024. The Applicant was represented by Mr John Carswell of JLC Property Letting. The First Named Respondent appeared personally. The Second Named Respondent was neither present nor represented.

2.2 The Tribunal heard firstly from Mr Carswell. He confirmed that, as per his additional submission, the whole of 26 May 2017 and 25 November 2017 were included within the initial term, yielding six months. The tenancy thereafter ran on a month to month basis, with each month long period beginning on, and including, the 26th day of each month with the last included day being the 25th day of the following month. In terms of the notice to quit thereafter specifying the 25 May 2023, when the tenancy agreement was running on a month to month basis, he highlighted a previous decision of the Tribunal (reference FTS/HPC/EV/23/1649) whereby no issue had been taken with the validity of a notice to quit which specified the last included date of a rental period.

2.3 The Tribunal heard further from Mr Carswell regarding the reasonableness of granting an order for recovery of possession. The Applicant had taken a decision to sell this, and her other, rental properties for financial reasons, hence the steps taken to end the tenancy. She had approached the local authority with an offer to sell with the sitting tenant however they were not prepared to purchase the property.

2.4 The First Named Respondent confirmed that the application was not opposed. She resided at the property alone. She wished to move out as soon as possible due to issues with the condition of the property. It was affected by mould growth and water ingress. She had approached Clackmannanshire Council for assistance however, they had indicated they would only accept a homeless application once an order for recovery of possession had been granted.

3. Reasons For Decision

- 3.1 The Tribunal considered that the initial term of the tenancy agreement was for a period of six months. The first issue was therefore whether the 25th May 2023, being the last day the Respondents were contractually entitled to occupy the property in that monthly period, represented a valid ish date.
- 3.2 The Tribunal considered that it did. It followed the reasoning in *Morrison's Executors v Rendall* 1989 S.L.T. (Land Ct.) 89 (1988). A notice to quit could specify either the last day of the contractual period or the first of the following period. If, as in the present case, it was the former, the tenant was entitled to occupy the property up to the last second of the date, at which point they would be expected to have vacated the property. As the notice to quit was held to be valid, notice in terms of the section 33 of the 1988 Act had properly been given to the Respondents.
- 3.3 The only remaining issue outstanding was whether it was reasonable to grant the order sought. The Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made. The Tribunal noted that no opposition was being taken to the application and that the First Named Respondent wished to obtain alternative accommodation through the local authority. In the circumstances, the Tribunal considered that no hearing was necessary and granted the order for recovery of 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.

Alastair Houston

Legal Member/Chair

2 February 2024
Date