



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/18/1247

Re: Property at 4/4 West Pilton Rise, Edinburgh, EH4 4DY (“the Property”)

Parties:

Mr Michael Munro, 3/6 West Pilton Lea, Edinburgh, EH4 4CS (“the Applicant”)

Ms Tammy Stacey Nisbet, 4/4 West Pilton Rise, Edinburgh, EH4 4DY (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the property at 4/4 West Pilton Rise Edinburgh EH4 4DY be made on termination of the short assured tenancy, in terms of 33(1) of the Housing (Scotland) Act 1988.

This is a case management discussion in connection with an application in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, “the Rules” to recover possession of the property at 4/4 West Pilton Rise Edinburgh EH4 4DY on the basis of the termination of a short assured tenancy. The application was made on 21 May 2018 by Mr Scott Runciman of Gilson Gray solicitors as agents for the landlord Mr Michael Munro. The tenant Ms Tammy Stacey Nisbet received intimation of today's case management discussion by sheriff officer on 12 July 2018. The tribunal had sight of the execution of service by the sheriff officers. Ms Nisbet did not attend and was not represented.

The tribunal had before it the following copy documents:

1. Application dated 18 May 2018 and received by the Tribunal on 21 May 2018.
2. Short assured tenancy agreement dated 27 July 2006
3. AT5 form dated 27 July 2006.

Lesley Ward

4. S33 notice dated 14 March 2018.
5. Notice to quit dated 14 March 2018.
6. Execution of service of notice to quit and s33 notice by sheriff officer dated 14 March 2018.
7. S11 notice dated 18 May 2018.

Preliminary matter

The tribunal noted that the AT5 and the tenancy agreement were both signed on the same day, namely the 27 July 2006. For a short assured tenancy to be constituted the AT5 has to be completed in advance of the lease. The tribunal also noted that clause 15 of the tenancy agreement states:

The provisions of the Housing (Scotland) Act 1988 apply to the Tenancy and I acknowledge (One) I have received notice by the Landlord before creation of the Tenancy pursuant to and in terms of Section 32(2) of the Act to the effect that the Tenancy is a short assured tenancy...

Mr Runciman had nothing to add regarding the timing of signature of the AT5. In the absence of any evidence to the contrary, the tribunal accepted that the tenancy is a short assured tenancy.

That being the case, the tribunal went on to consider the written evidence lodged.

Findings in fact

The tribunal made the following findings in fact:

The tribunal is satisfied that the s33 notice and the notice to quit are valid.

The tribunal is satisfied that the tenancy has reached its ish and tacit relocation is not operating.

The tenancy agreement is for the period from 3 August 2006 until 3 February 2007.

Thereafter the agreement provides for the tenancy enduring month to month and can be terminated by two months written notice.

The notice to quit provides for an ish date of 3 May 2018 and this was served by sheriff officer on 14 March 2018.

The s33 notice is dated 14 March 2018 and it was also served on that date.

The s33 notice gives two months written notice and requires possession by 15 May 2018, which complies with s33(2) of the Act.

The appropriate notice to the local authority has been carried out in terms of s11 of the Homelessness Etc. Act 2003.

The tribunal is satisfied that no further contractual tenancy is in existence.

Reasons

The tribunal is satisfied that the respondent had received the appropriate notice of the case management discussion in terms of Rule 24.

The tribunal is satisfied that it has sufficient information before it today to make a decision in the absence of the respondent.

The tribunal is satisfied that the terms of s33 of the Housing (Scotland) Act 1988 have been complied with.

In accordance with the overriding objective, the tribunal is satisfied that the procedure has been fair.

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.

Lesley Ward

Lesley A Ward Legal Member

Date 9 August 2018