



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 66 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/22/3492

Re: 16 Keathbank Court, Balmoral Road, Rattray, Blairgowrie, PH107HW ("the Property")

Parties:

Ms Elspeth Bruce residing at Broombarns Farm Cottage, Forgandenny, Perth, PH2 9HT ('the Applicant')

Calvin Gordon of Thorntons Law LLP, 3rd Floor, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD ('the Applicant's Representative')

Mark Souter residing at 16 Keathbank Court, Balmoral Road, Rattray, Blairgowrie, PH107HW ('the Respondent')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Member: Jacqui Taylor (Legal Member) Ann Moore (Ordinary Member)

Background

1. The Applicant applied to the Tribunal for eviction/ possession of the Rented Property under section 33 of the Housing (Scotland) Act 1988, in terms of Rule 66 of the Procedure Rules. The application was dated 22nd September 2022 and was received by the Tribunal on the same date. The application concerns eviction proceedings in relation to a short assured tenancy. The tenancy commenced on 22nd August 2014 and ended on 21st February 2015 and continued on a month by month basis thereafter. There was a joint tenant Kirsty Soutter who has vacated the Property and the tenancy is no longer a joint tenancy. The notice to quit and section 33 were sent to the Respondent by registered post on 13th April 2022.

2. Documents lodged with the Tribunal were:-

2.1 The Short Assured Tenancy Agreement which commenced on 22nd August 2014.

2.2 Form AT5 dated 2014 and acknowledged by the Tenant on 22nd August 2014.

- 2.3 Section 33 Notice dated 13th April 2022 giving notice to the Tenant to vacate the Property on or before 21st June 2022.
- 2.3 A copy of the Notice to Quit dated 13th April 2022 giving the Tenant formal notice to quit the Property by 21st June 2022.
- 2.4 A recorded delivery slip dated 13th April 2022 together with a proof of delivery slip confirming the letter was delivered on 14th April 2022.
- 2.5 Section 11 Notice addressed to Perth and Kinross Council, with accompanying email dated 21st September 2022
- 2.6 An automatic reply email from Perth and Kinross Council dated 21st September 2022.
- 2.7 An email from Kirsty Soutter to the Applicant's letting agent dated 26th November 2018 advising that she was vacating the Property on that day.
- 2.8 Rent statements.
- 2.9 Energy Performance Certificate for Broombarns Farm Cottage, Forgandenny, Perth.
- 2.10 Energy Performance Certificate for 16 Keathbank Court, Balmoral Road, Rattray, Blairgowrie.

3. Case Management Discussion

3.1 This case called for a Case Management Discussion (CMD) Conference call at 10.00 on 23rd February 2023.

The Applicant did not attend but her representative Calvin Gordon of Thornton, Solicitors, attended on her behalf.

The Respondent did not attend. The Respondent had been served with notice of the CMD by Roderick Stevenson, Sheriff Officer on 10th January 2023. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been met.

3.2 No written responses had been received from the Respondent.

3.3 Mr Gordon made the following oral representations to the Tribunal:

3.3.1 The tenancy had originally been in the joint names of Mark Souter and Kirsty Souter. Kirsty Souter sent the Landlord's agents an email dated 26th November 2018 advising that she was vacating the Property that day. She had not given the Landlord the required period of two months prior notice but this requirement had been waived by the Landlord. Prior to Kirsty Souter vacating the Property she had paid the monthly rent payments of £500. After 26th November 2018 the rent payments had been made by Mark Souter and he referred the Tribunal to the rent statements that had been produced. The short assured tenancy had been varied by the actings of the parties and Mark Souter was the sole tenant after 26th November 2018.

3.3.2 The Section 33 Notice that had been served on the Respondent was valid.

3.3.3. In connection with whether or not it is reasonable for the Tribunal to grant the application he explained that the Applicant currently rents a dwellinghouse at Broombarns Farm Cottage, Forgandenny, Perth, which has a very poor energy performance rating and has single glazing. In comparison the Applicant's Property 16 Keathbank Court, Balmoral Road, Rattray, Blairgowrie has a good energy performance rating. He referred to the two energy performance certificates that have

been produced. He explained that the Applicant wishes to move into the Property over the autumn and winter period. She intends to carry out works to the Property in 2023 and then sell the Property. She has a mortgage over the Property and wishes to release capital for a self build project with her partner Colin McGregor. He advised that the Respondent has applied to be housed by Perth and Kinross Council and it is unlikely that he will be provided with accommodation until the Tribunal grant the eviction order. The Applicant does not know if the Respondent has applied for private rented housing. The Applicant does not know the Respondent's employment position and whether or not he resides with dependants. The Applicant signed a short assured tenancy and knew from the start of the lease that the Landlord was entitled to regain possession of the Property at the end of the tenancy. The Applicant is entitled to seek possession.

4. The Tribunal made the following findings in fact:

4.1 The Applicant is owner of the Property and the title is registered in the Land Register of Scotland under title number PTH33974.

4.2 The Landlord named on the lease and the Registered Landlord of the Property is Elspeth Bruce.

4.3 The Tenants named on the short assured tenancy agreement are Mark Souter and Miss Kirsty Souter.

4.4 On 26th November 2018 Kirsty Souter advised the Applicant that she was vacating the Property on that day.

4.5 Kirsty Souter paid the monthly rent payments from February 2018 to November 2018. From December 2018 to December 2020 the monthly rent payments were made by Mark Souter.

4.6 The original term of the Tenancy was from 22nd August 2014 to 21st February 2015 and month to month thereafter.

4.7 The rent due in terms of the lease was £500 per calendar month.

5. Requirements of Section 66 of the Procedure Rules.

(a) The Tribunal confirmed that the application correctly detailed the requirements of section 66 of the Procedure Rules namely:-

(i) the name, address and registration number of the Landlord.

(ii) the name and address of the Landlord's representative.

(iii) the name and address of the Tenants.

(b) The Tribunal confirmed that the application had been accompanied by the documents specified in Section 66(b) of the Procedure Rules:

(i) The Tenancy Agreement.

(ii) The Notice that the tenancy is a short assured tenancy.

(iii) The notice given to the tenant under section 33(1)(d) of the 1988 Act.

(iv) The notice to quit served by the Landlord on the Tenant.

(v) The required notice giving Perth and Kinross Council notice of the proceedings under section 11 of the Homelessness etc Scotland Act 2003.

(vi) A recorded delivery slip in respect of service of notice to quit and section 33 notice on 14th April 2022.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Landlords as required by Section 66(c) of the Procedure Rules.

6. Requirements of Section 33 of the Housing (Scotland) Act 1988

6.1 The Applicant's solicitor confirmed that there is no further contractual tenancy agreement between the parties.

6.2 The lease stated that the tenancy will run from 22nd August 2014 until 21st February 2015 and thereafter will continue from month to month until ended by either party. The Tribunal accepted that the tenant of the lease had been changed from the joint names of Mark Souter and Kirsty Souter to the sole name of Mark Souter. This amendment to the lease was not made in writing but was confirmed by the actings of the parties namely the fact that Kirsty Souter vacated the Property on 26th November 2018 and after that date Mark Souter made the rent payments which had been accepted by the Applicant. The Notice to Quit and Section 33 notice had been served on Mark Souter by recorded delivery post on 14th April 2022. Both documents required the Tenant to vacate the Property on 21st June 2022, being the ish of the tenancy. The required two months period of notice had been provided.

6.3 The Tribunal were satisfied that the requirements of section 33 have been met, namely that:

- (i) The Short assured Tenancy has reached its ish.
- (ii) That tacit relocation is not operating.
- (iii) That no further contractual tenancy is in existence.
- (iv) That the Landlord has given to the Tenant notice stating that he requires possession of the Property. In terms of section 33(2) the period of notice is two months.

6.4 The Tribunal found that it was reasonable for the eviction order to be granted given that:

6.4.1 The Applicant wishes to improve and sell 16 Keathbank Court to enable her to fund the development cost of a new property she is building.

6.4.2 The Applicant is currently residing in Broombarns Farm Cottage which has a current energy efficient rating of 23 which is Band F and 16 Keathbank Court has a current energy efficient rating of 83.

6.4.3 The Respondent signed a short assured tenancy and knew from the start of the tenancy that the Landlord would be entitled to recover possession on serving the required notices.

6.4.4 The Respondent has applied to be rehoused by Perth and Kinross Council.

6.4.5 The Respondent does not oppose the application.

7. Decision

The Tribunal determined that the requirements of section 33(1) of the Housing (Scotland Act) 1988 had been complied with and made an order for possession of the Property.

8. The Tribunal noted that the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 in relation to delaying evictions do not apply to this application as the Notice to Leave was served on the Respondent before 6th September 2022 and the application was received by the Tribunal before 28th October 2022.

9. 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.

J Taylor

Legal Member

23rd February 2023