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

Chamber Ref: FTS/HPC/EV/22/3977

Re: Property at 4 Forest Lane, Hamilton, South Lanarkshire, ML3 7SF ("the Property")

Parties:

Mr Jonathan Dzimwasha, 8 The Saplings, Woodside, Telford, TF7 5UJ ("the Applicant")

Miss Avalon Faulds, 4 Forest Lane, Hamilton, South Lanarkshire, ML3 7SF ("the Respondent")

Tribunal Members:

Nairn Young (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

- Background

This is an application for an order for recovery of possession of the Property, made on the basis that it is let by the Applicant to the Respondent in terms of a short assured tenancy. It called for a hearing at 10am on 12 June 2023, by teleconference. The Applicant was represented on the call by Ms Stewart of Igloo Estate Agents. The Respondent was represented on the call by Ms Berry of Govan Law Centre.

- Findings in Fact

While there were some aspects of the submissions that sought to rely on facts that were in dispute, the Tribunal's decision ultimately was based on points of law that rested on facts that were agreed, as follows:

1. The Respondent occupies the Property in terms of an assured tenancy agreement entered into with the Applicant ('the Agreement').

2. The Agreement states that:

   "The tenancy will commence on: 7/10/14 and will end on: 6/4/15. If the agreement is not brought to an end by either party on the above date, it will continue thereafter on a monthly basis until terminated by either party giving no less than 2 months notice to the other party."

3. Later in the Agreement, it is stated: "In signing this agreement and taking entry to the accommodation, the tenant acknowledges that … he understands this tenancy to be a Short Assured Tenancy within the meaning of the Housing (Scotland) Act 1988."

4. On 8 June 2022, the Applicant served notice to quit the tenancy on the Respondent, by sheriff officers, purporting to terminate the tenancy on 18 August 2022.

- Reasons for Decision

5. The parties' representatives made full written submissions in advance of the hearing, which were developed by some further oral submissions. The Respondent's representative set forth her opposition to the application on a number of grounds; although ultimately it was only necessary for the Tribunal to address two of these. These were: that the term of the tenancy was insufficient to form a short assured tenancy, being one day short of the

requisite 6 months; and that the notice to leave purported to terminate the tenancy on a date that was not a valid ish date and therefore was ineffective.

6. The Respondent's case in relation to the first point observed that the initial term of the tenancy was 7 October 2014 to 6 April 2015. She then suggested that, there being no other wording in the lease as to the intended duration and no suggestion of any agreement between the parties to the contrary, the usual principle for calculating time in Scots law should be applied (*civilis computatio*) and the first day excluded (per. *Calmac Development Limited* v *Wendy Murdoch* SD203/11). The term of the tenancy would thereby be one day short of the 6 months required for a short-assured tenancy to be created under Section 32(1)(a) of the 1988 Act.

7. The issue with this line of reasoning is that it relies on the assertion that there was nothing else in the Agreement that could be an aid to interpretation of the intended duration of it. That is not correct: the Respondent expressly acknowledges the tenancy as a short assured tenancy in the Agreement. There is no doubt that such an acknowledgement could not supersede clear wording to the contrary and transform an agreement into a short assured tenancy where it patently was not one (e.g. if the relevant term had expressly excluded 7 October 2014 and/ or 6 April 2014); but this is not a case where the wording is clear. There are at least two interpretations that may legally be given to the words; but only one that accords with the acknowledgement quoted. In those circumstances, the Tribunal considers it is acceptable to use the words of the acknowledgement to aid in the interpretation of the ambiguous term and determine that it must be interpreted to include both the start and end dates. On that basis, the tenancy has the requisite 6-month term and is a short assured tenancy.

8. The Respondent's submission on the second point was that the initial period of the lease ran from 7 October 2014 until 6 April 2015. The valid ish dates are therefore 6 April or 6 October in any year. The notice to quit lodged with the Application purports to terminate the tenancy on 18 August 2022, which is

not a valid date. The Notice to Quit was therefore ineffective in terminating the tenancy.

9. The Applicant referred in response to the term of the Agreement stating: "If the agreement is not brought to an end by either party on the above date, it will continue thereafter on a monthly basis until terminated by either party giving no less than 2 months notice to the other party." This, it was suggested meant the tenancy was a 'rolling contract' and the correct procedure was followed by giving 2 months notice (indeed more than 2 months). He suggested that, as the tenancy was not continuing under tacit relocation, there was no specific ish date. The notice was therefore effective.

10. The Applicant is correct to note that the tenancy was not continuing by tacit relocation; but that does not mean that just any day may be designated as an ish date. The Agreement states that the tenancy will run on a monthly basis following the initial term. The ish date may therefore be the 6th day of any month following the initial term; and the requirement for 2 months notice must be read as meaning 2 months notice of termination <u>on a valid ish date</u>. The notice was therefore ineffective in terminating the tenancy and the tenancy continues. This application proceeds on the basis of recovery under s.33 of the Housing (Scotland) Act. It is fatal to any such application that the tenancy has not reached its ish, and the application must therefore be refused.

- Decision

Application refused.

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.

26th June 2023

Legal Member/Chair **Date**