

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/18/0486

Re: Property at 5E Smithy Court, Inverkip, PA16 0AZ (“the Property”)

Parties:

Lowther Homes Limited, 25 Cochrane Street, Glasgow, G1 1HL (“the Applicant”)

Ms Lauren Nolan, 5E Smithy Court, Inverkip, PA16 0AZ (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application dated 22nd February 2018 brought in terms of Rule 66 (Application for order for possession upon termination of a short assured tenancy) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended.

The Applicant provided with its application copies of the short assured tenancy agreement, form AT5, Notice to Quit, Section 33 notice, Section 11 notice, relevant executions of service, and copy rent arrears statement. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the Housing (Scotland) Act 1988, and the procedures set out in that Act had been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 2nd July 2018, and I was provided with the executions of service.

Case Management Discussion

A Case Management Discussion was held on 1st August 2018 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Mr David Adams, solicitor. The Respondent did not appear, nor was she represented.

I should note that at a previous Case Management Discussion held on 9th May 2018 at Gamble Halls, 44 Shore Road, 44 Shore Road, Gourock, I continued this application to today's date.

One of the two reasons I did so was that I was not satisfied that valid service had been made on the Respondent of the notification, application, papers and guidance notes from the Tribunal.

As noted above, sheriff officers made a second attempt to serve the notification, application, papers and guidance notes from the Tribunal in relation to today's hearing, and valid service was made on the Respondent.

The second reason for the continuation was to clarify why albeit that the short assured tenancy commenced on 19th February 2016 and was signed on the same date by the parties, the form AT5 was signed by the tenant on 14th January 2015, over a year earlier.

Mr Adams advised me that the reason for this anomaly in dates was unclear, but that so far as he had been able to ascertain, he believed that the correct year of signing was actually 2016, and that the year 2015 was simply an error.

In the absence of contradiction from the Respondent, I am content to accept that explanation in the circumstances. In any event, the date of signing on the form AT5 does pre-date the commencement of the lease agreement, which agreement signed by the parties also acknowledges on the part of the tenant at paragraph 20(i) that the tenant was served with a form AT5 before the creation of the tenancy and that the tenant understands the tenancy to be a short assured tenancy.

I was invited by Mr Adams with reference to the application and papers to grant the order sought.

Statement of Reasons

In terms of Section 33 of the Housing (Scotland) Act 1988, the Tribunal shall make an order for possession of the house let on the tenancy if:

- (a) the short assured tenancy has reached its end;
- (b) tacit relocation is not operating;
- (c) no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
- (d) the landlord has given to the tenant notice stating that he requires possession of the house.

All of the above criteria have been satisfied in this application, and accordingly the Tribunal shall make an order for possession.

Decision

In these circumstances, I will make an order for possession of the house let on the tenancy as sought in this application.

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.

N Kinnear

Legal Member/Chair

01/08/18

Date