



All Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/19/2718

Re: Property at 8 Millbank, North Kessock, Inverness, IV1 3XJ (“the Property”)

Parties:

Mrs Heather Masterson, Moor of Lettoch, Windhill, Beauly, IV4 7AS (“the Applicant”)

Miss Danielle McLeish, 8 Millbank, North Kessock, Inverness, IV1 3XJ (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application should be refused.

Background

This is an Application for an eviction order for the Property.

By Application dated 26th August 2019 the Applicant applied to the Tribunal for an order for eviction against the Respondent under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and in support of the Application the Applicant had submitted A Notice to Leave for Sub Tenant, a Home Report dated 17th May 2016 and Notice to the Local Authority in terms of the Homelessness etc (Scotland) Act 2003.

The Tribunal accepted the case on 16 September 2019 and wrote to the Applicant recommending that certain matters be addressed prior to the Case Management Discussion. The Tribunal was seeking evidence of service of the Notice to Leave, the competence of a Notice to Leave for Sub Tenant being used, a copy of a tenancy agreement between the parties, evidence of consent by the Joint owner to the Application and the letter also raised the issue of further evidence of intention to sell the Property.

Case Management Discussion

The Applicant and Respondent both attended the Case Management Discussion along with Supporters.

The Applicant provided additional materials in the form of a copy tenancy agreement, tenancy guidance notes, a document said to be a Notice to Leave, an e mail from the Joint Owner and an email dated 24th October 2019 confirming instruction of a New Home Report. The Tribunal had an opportunity to consider these and these were exhibited to the Respondent during the Case Management Discussion.

The Applicant confirmed that she was relying on the Notice to Leave produced at the Case Management Discussion and not the Notice to Sub Tenant previously produced along with the Application.

The Applicant's position was that she owned the property with her husband from whom she had been separated for some time. They now intended to divorce and had been advised that they ought to split the matrimonial assets at this time and this meant that they required to sell the house and split the proceeds.

During the Case Management Discussion the Respondent produced paperwork dated 22nd October 2019 confirming that she had accepted a new tenancy with Highland Council with effect from a date in mid November 2019. She confirmed at the conclusion of the Case Management Discussion that it was her intention to take this tenancy whatever the outcome of the Tribunal.

There was discussion on a number of points which were raised as issues by the Tribunal. These were as follows :-

1. Had the Owner of the property given consent to the Application for an eviction order?
2. Was the Notice to Leave served in the correct manner ?

3. Was the Notice to Leave valid in that in Part 3 of the Notice where details are given of the grounds, this part was blank although there was reference in the evidence Section of that Part to an updated Home Report being available in early June 2019.

4. Was the correct date specified in the Notice to Leave in Part 4?

5. Was there sufficient evidence before the Tribunal to establish the eviction ground?

As far as point 1 above was concerned the Applicant displayed an email from Scott Masterson dated 24th October 2019 which appeared to confirm the history of how the Respondent came to be a tenant at the property and confirmed that the Applicant had full permission to deal with the tenancy. The Respondent was shown this e mail during the Case management Discussion and did not take issue with it other than its reference to certain behaviour alleged to have occurred during the tenancy which she disputed.

As far as point 2 was concerned the Notice to Leave had been served by being hand delivered to the Respondent. The tenancy agreement was silent as to communication methods between the parties and the Respondent accepted that she had received this on 28th March 2019.

Notice to Leave

The legislation sets out what must be contained within a Notice to Leave in section 62 of the 2016 Act and is set out below.

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3)References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4)The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5)For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

On consideration of the Notice to Leave relied on by the Applicant in this case it was noted that the first part of Part 3 was blank. In section 62 of the 2016 Act at subsection 1(c) it indicates that a Notice to Leave states the eviction grounds or grounds on the basis of which the landlord proposes to seek an eviction order.

The typed sections in Part 3 of the Notice to Leave indicate that the party giving notice to leave should 'state particulars of how you believe the ground has arisen. Please give as much detail as possible including relevant dates.....' After the space in the Notice for information to be given as to the grounds it further states 'is it important that the tenant fully understands why you are seeking to evict them and that the action you are taking is justified'. The section then invites supporting evidence and indicates that this can help in the tenant's understanding of the reasons for eviction. The language contained in the typed section of Part 3 in the Notice to Leave suggests that statement of the grounds is mandatory and provision of evidence is not.

At the Case Management discussion the Applicant responded to this issue being raised by the Tribunal by indicating that she felt sufficient notice of the grounds had been given with reference to the evidence section of Part 3 of the Notice where it was indicated that an updated home report would be made available and that this should be in early June 2019. She also pointed to Part 2 of the Notice where the eviction ground was ticked as being "Landlord intends to sell let property".

The Respondent's position was that she was aware of the reason why the application was being made and that the Applicant and her husband "wanted the house back". She indicated that whilst she understood the Notice to Leave her information had come from the Applicant's husband.

The Tribunal raised the issue of the date stated in Part 4 of the Notice to Leave, the earliest date at which Tribunal proceedings could start. This application proceeded in terms of Ground 1 of the eviction grounds under the 2016 Act and required 84 days' notice to be given. The Notice to Leave had been hand delivered by the Applicant to the Respondent on 28 March 2019. This was accepted as having been received by the Respondent on that date. In considering the appropriate notice period the Tribunal noted that the date of 28 March 2019 would be the first day of the notice period in terms of section 54(2)(ii) of the 2016 Act. The date noted in Part 4 of the Notice should be the date after the expiry of the notice period. Taking 84 days including 28 March 2019 took the 85th day to 20 June 2019. The date on the Part 4 of the form was 24 June 2019.

The Applicant was asked for comment on this and indicated that she had given the Respondent what she described as "a few more days" because by her calculation the notice period had expired on a Friday. The terms of section 73 of the 2016 Act were drawn to the Applicant's attention which states as follows:-

73 Minor errors in documents

(1) An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.

(2) This section applies to—

(a) a notice under section 14(3), 16(3)(c), 22(1) or 61(1),

(b) the document by which a referral is made to a rent officer under section 24(1),

(c) the document by which an application is made to a rent officer under section 42(1), and

(d) a notice to leave (as defined by section 62(1)).

The Applicant submitted that in giving a date in Part 4 of the Notice to Leave which was later than the correct date that this was a minor error which did not affect the effect of the Notice to Leave and as such did not render the document invalid in terms of the Act. The Respondent did not seek to argue that she had not had proper Notice of the intention to seek an eviction order.

As far as the Eviction Ground was concerned the Applicant indicated that she and her husband wished to sell the house. The evidence to support this was a Home Report from 2016 and an email confirming an appointment for a Home Report which was dated 24th October 2019 and sent by what appeared to be an online survey website. There had been no Home Report instructed in the summer of 2019 as had been indicated within the Notice to Leave. The Applicant was asked if she had engaged the services of a solicitor or other agency to market the property and she advised that she could not afford a solicitor and usually marketed properties herself without the assistance of others. She indicated that she had not had a new Home Report prepared as she could not access the house until the Respondent vacated it.

Findings in Fact.

1. The parties entered into a tenancy at the property in June 2018.
- 2 The rent agreed was £850 per month.
- 2 On 28th March 2019 the Applicant hand delivered a document to the Respondent intended to be a Notice to Leave the property in terms of the 2016 Act.
3. This document was blank at Part 3 where details of reasons for eviction are to be stated.
4. The date given in part 4 of the document was a date 4 days after the earliest date when Tribunal proceedings could begin.
5. The Joint owner of the property consented to the Applicant dealing with all matters relating to the tenancy including the Tribunal application.
6. The stated eviction ground is that the Applicant and joint owner intend to sell the property. The only evidence of this before the Tribunal other than a Home Report over 3 years old was an e mail dated 24th October 2019, one day before the Case Management Discussion confirming instruction of a new Home Report.

Reasons for Decision

The Tribunal was satisfied on the evidence before it that the joint owner of the Property had consented to the Application for an Eviction Order and that the Applicant was authorised by him to deal with the matter on behalf of both owners.

The Tribunal was satisfied that the document which was said to be a Notice to Leave was properly served on the Respondent by being hand delivered on 28th March 2019. The tenancy agreement was silent as to communication methods and there was no prejudice to the Respondent who accepted having received the Notice by this means.

The Tribunal was satisfied that the inclusion of a date after the earliest date at which Tribunal proceedings could be started did not materially effect the effect of the document said to be a Notice to Leave and was a minor error as set out in section 73 of the 2016 Act.. In fact, the Respondent was given additional days' notice and there was no prejudice to her by the inclusion of a later date.

The Tribunal was of the view that the document produced as a Notice to Leave did not fulfil the requirements of section 62(1)(c) of the 2016 Act in that it did not state the eviction grounds in Part 3. It is the view of the Tribunal that this part must be completed in terms of the legislation. As a result the document produced here cannot be regarded as a proper Notice to Leave. It follows from this that the Application must fail as it is not accompanied by a Notice to Leave as specified within the 2016 Act.

In any event the Tribunal was not satisfied that there was sufficient evidence of the intention to sell the property produced by the Applicant to allow an order to be granted had the Notice to Leave been validly framed. The Home Report was three years old and all that was produced other than this was an email confirming an appointment for a new Home Report to be carried out, dated the day before the Case Management Discussion. The Tribunal was not persuaded that there was an intention to sell when vacant possession was achieved, rather that perhaps at some point later a sale was in contemplation.

The Tribunal observed that if the Respondent leaves the property in November 2019 and returns the keys as was her stated intention at the Case Management Discussion then the Applicant could seek advice as to whether she could simply take possession of the property at that stage.

Decision

The Application is refused on the basis that a Notice to Leave did not accompany the Application and there was insufficient evidence produced to find that the eviction ground is satisfied.

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.

V.Bremner

Legal Member/Chair

26 October 2019

Date