

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 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/19/3714

Re: Property at 12B Elizabeth Crescent, Thornliebank, Glasgow, G46 7HN (“the Property”)

Parties:

Mrs Patricia Nicol, 3 Queens Terrace, Prestwick, KA9 1AH (“the Applicant”)

Ms Angela White, 12B Elizabeth Crescent, Thornliebank, Glasgow, G46 7HN (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted

Background

1. On 19 November 2019 an application was made to the Tribunal by the Applicant seeking an order for possession in respect of the property. That application was acknowledged by the Tribunal by letter dated 25 November 2019.
2. A letter was then sent by the Tribunal to the Applicant’s solicitor dated 3 December 2019. In that letter the Tribunal asked for further information in respect of three matters. The Tribunal asked for evidence of the service of the Notice to Leave, a copy of the lease between the parties and submissions on

- matters relating to the provisions of sections 52, 54 and 62 of the Private Housing (Tenancies) (Scotland) Act 2016 as they related to the Notice to Leave.
3. On 19 December 2019 the Tribunal then wrote to the parties setting a Case Management Discussion to take place on 22 January 2020 at the Glasgow Tribunals Centre. By that date no response had been received to the letter of 3 December 2019.
 4. By email of 20 December, the Applicant's solicitor responded to the Tribunal letter of 3 December providing information regarding the service of the Notice to Leave and copies of various previous tenancy agreements between the parties.
 5. The Applicant's solicitor also indicated that in her view the Notice to Leave had given sufficient notice in terms of the relevant provisions of the 2016 Act.

The Case Management Discussion

6. The Case Management Discussion took place in the Glasgow Tribunals Centre on 22 January 2020. The Applicant was not personally present but was represented by her solicitor Ms Lauren Ferguson from Pieri Graham Solicitors, Glasgow. The Respondent was neither present nor represented. The Respondent had provided no written representations in advance of the Case Management Discussion.
7. The Tribunal Member explained the purpose of the Case Management Discussion to the Applicant's solicitor and explained the overriding objective of the Tribunal to deal with proceedings justly.
8. Thereafter the Case Management Discussion proceeded. The Tribunal Member raised various issues with the Applicant's solicitor and carefully considered the responses. The only real matter for discussion and decision was whether the Notice to Leave which had been served upon the Applicant was valid and effective in terms of the 2016 Act. In questioning the Applicant's solicitor regarding this matter, reference was made by the Tribunal to a previous

Tribunal decision under reference number FTS/HPC/EV/18/3231. That was a decision in respect of another eviction application issued by the Tribunal on 2 May 2019 and dealt with the questions of the validity and effectiveness of a Notice to Leave.

Findings in Fact

9. The Applicant and the Respondent, as respectively the Landlord and Tenant entered into a tenancy of the property initially on 6 May 2015.
10. At that time, the tenancy was a short assured tenancy under and in terms of the Housing (Scotland) Act 1988. On 6 May 2018, the Applicant and Respondent signed a new tenancy agreement in respect of the property. That tenancy was a private residential tenancy under and in terms of the Private Housing (Tenancies) (Scotland) Act 2016.
11. On 25 July 2019, the Applicant served upon the Respondent a Notice to Leave under and in terms of the Private Housing (Tenancies) (Scotland) Act 2016.
12. The Notice to Leave informed the Tenant that the Landlord wished to seek recovery of possession using ground 1 contained within schedule 3 of the 2016 Act. The Notice to Leave indicated that an application would not be submitted to the Tribunal for an eviction order prior to 18 October 2019.
13. The Notice set out a ground contained within the relevant schedule of the Act and the Tribunal were satisfied that the Landlord intends to sell the property.
14. The basis for the order for possession was accordingly established.

Reasons for Decision

15. The order for eviction was sought by the Landlord based on a ground specified in the 2016 Act and fully narrated in the Notice to Leave served upon the Tenant. The Tribunal were satisfied that the Notice to Leave had been received by the Tenant. The Notice to Leave was dated 25 July 2019 and set out that an application to the tribunal seeking an order for eviction would not be made before 18 October 2019. The Tribunal is aware of the relevant provisions of the 2016 Act and in particular the provisions contained in sections 54 and 62 regarding the requirements in respect of the appropriate periods of notice to be given in a Notice to Leave and the requirements for completion of the Notice to Leave. The Tribunal is also aware of the provisions of section 73 of the 2016 Act which indicates that a minor error in the completion of a Notice to Leave does not make the Notice to Leave invalid “unless the error materially affects the effect of the document”.
16. The Tribunal accepted that the Notice to Leave complied with the provisions set out in section 62 (1) (a) and section 62 (1) (c), namely that the Notice to Leave was in writing and set out the eviction ground that the Landlord proposed to use.
17. The only question to be determined by the Tribunal was whether the Notice to Leave complied with the requirements in section 62 (1) (b) in respect of the specification in the a Notice to Leave of a date being 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”.
18. In terms of the provisions of section 62 (4) the date to be specified in accordance with section 62 (1) (b) is “the day falling after the day on which the notice period defined in section 54 (2) will expire”. Section 54 (2) indicates that the relevant period in relation to a Notice to Leave begins on the day the Tenant receives the Notice to Leave from the Landlord and expires on the day falling either 28 days after the day it began or 84 days after the day it began. Different grounds for eviction have different requirements in relation to notice periods.

19. In this case, the appropriate period of notice was 84 days. Section 63 (5) indicates that it is to be assumed that the Tenant will receive the Notice to Leave 48 hours after it is sent.
20. In this case the Notice to Leave was sent on 25 July 2019. Based on the assumptions in section 62 (5) the Tenant would be assumed to receive the notice on 27 July. However the Landlord produced evidence that the Tenant received the notice on 26 July 2019.
21. Accordingly, the Tribunal thereafter requires to calculate the appropriate period of notice to be given to the Tenant. If the Tribunal accepts the Tenant actually received the Notice on 26 July 2019 the period of notice (84 days) would end on 18 October 2019. If the Tribunal applies the assumption in section 62 (5) that the notice was not received until 27 July the period of notice would expire on 19 October 2019.
22. When, applying the provisions of section 62 (1) (b) the date to specified in the notice, being the day on which the Landlord expects to become entitled to apply to the Tribunal, should either have been 19 October 2019 or 20 October 2019. The actual date specified in the notice was 18 October 2019.
23. Accordingly, on a strict interpretation of the provisions of section 54 and 62, the date specified in the Notice to Leave is either one day short or two days short of the date that should be specified in terms of section 62 (1) (b). The question which the Tribunal requires to determine is whether that error was a minor error in the document which did not “materially affect the effect” of the notice and which could thus be ignored by the Tribunal.
24. Accordingly, the question to be determined was whether the error in the date was one which “materially affects the effect of the document”. The Tribunal was aware of the decision in the previous case mentioned under reference FTS/HPC/EV/18/3231. The Tribunal noted that case related to a Notice to

Leave which required a 28 day period of notice and in which the period actually given was three days short. In that case, the Tribunal took the view that the “effect” of the Notice was to provide a Tenant at the very least with the “why” (the statutory ground) and the “when” of the proceedings that the Landlord anticipated raising. That Tribunal took the view that to state an earlier date than the date in which in terms of the Act the Landlord was entitled to raise proceedings was an error which was not “an obviously minor error”.

25. While holding the decision of the previous Tribunal in greatest respect, this Tribunal does not necessary agree that the “effect” of the notice requires the date in the notice to be a matter which goes to the materiality of the notice. This Tribunal takes the view that the “effect” of the Notice to Leave is to tell the Tenant that the Landlord intends to seek an eviction order and that the Landlord intends to use a specific ground of eviction. In both of those factors, the Notice to Leave which was prepared and served met that requirement. It clearly indicated that an eviction order would be sought and indicated the ground upon which it would be sought.

26. The question to be considered is whether, by being either one or two days short when a period of 84 days’ notice was required the error in the notice “materially affects the effect” of the document. The Tribunal takes the view that the error in the date of the notice does not materially affect the effect of the document. It was clearly an error in calculation of the period but, in the opinion of the Tribunal, not one which materially affected the effect of the document. The application for eviction itself was not lodged for another month after the date set out in the notice. The application was also sifted and approved by another Tribunal member. The Case Management Discussion was intimated to the Respondent. The Respondent had been in possession of the notice since 29 July and the date of the Case Management Discussion was 22 January. Accordingly the Respondent had been aware for a period of almost six months that an eviction order would be sought and had taken no attempts whatsoever to indicate any opposition to that process. Indeed the Tribunal noted that the Applicant’s solicitor indicated that the Respondent had already been in touch with the relevant local authority, had advised the local authority that she was

subject to ongoing eviction proceedings and had been offered alternative accommodation by the local authority in terms of the homelessness legislation. The Tribunal was also aware that any order granted by the Tribunal would not be enforced for another period of at least 6-8 weeks.

27. Accordingly the Tribunal takes the view that the error in the date specified in this Notice to Leave is a minor error which can be cured by utilising the provisions in section 73 of the 2016 Act. The Tribunal takes the view that an error of one day in a notice which requires to give effectively 87 days' notice is not one which "materially affects the effect" of the notice. Accordingly the Tribunal distinguishes the decision made in the previous case which related to a much more significant error in a notice which required to give a significantly shorter period of notice. The Tribunal accordingly grants the request from the Applicant's solicitor to make the order for eviction based on the ground specified.

28. The Tribunal notes that the Applicant has already instructed Slater Hogg & Howison to market the property for sale and that she has already paid an invoice to them in respect of preliminary works in that regard. The Tribunal accepts the Applicant's solicitor's position that the Applicant intends to sell the property and will proceed to do so once the Respondent has removed. Accordingly the Tribunal finds that the ground for eviction is established and grants the order for eviction.

Decision

29. The order for recovery of possession is granted.

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.

Jim Bauld

Legal Member/Chair

22 January 2020

Date