

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 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/18/0636

Re: Property at 15B Rose Street, Peterhead, AB42 1DB (“the Property”)

Parties:

Scotcrafts Leasing, 17 Rose Street, Peterhead, AB42 1DB (“the Applicant”)

Mr Aviars Kajaks, 15B Rose Street, Peterhead, AB42 1DB (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member)

Decision (in absence of the Respondent)

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

Background

The Applicant submitted an application seeking an order to evict the Respondent from the Property at 15B Rose Street, Peterhead, AB42 1DB. The Tribunal intimated the application to the Respondent on 24 July 2018 and advised him of the time and place of the Case Management Discussion on 23 August 2018. No written representations were received by the Tribunal from the Respondent

The Case Management Discussion took place as planned. The Applicants representative Mr Ben Grugeon was present and was accompanied by an employee of the Applicant Ms Pat Kennedy.

Ahead of the Case Management Discussion there had been correspondence between the Applicant and the Tribunal as to the manner of service of the Notice to Quit. This had been done by hand by the Applicant or her employee.

Case Management Discussion

As stated above the Case Management Discussion took place as planned on 23 August 2018. Mr Grugeon and Ms Kennedy were present. They sought an order for possession on the basis that the requisite period of two months had been given to the Tenant.

They acknowledged that they had delivered the Notice to Quit by hand. They had submitted in advance of the Case Management Discussion a letter bearing to be signed by the Respondent acknowledging receipt of the Notice to Quit of 28 December 2017.

They advised that the Respondent was quite open about matters in that he was not working, was unable to gain benefits and was therefore simply not paying rent as he had no other options and no other place to reside. The Respondent had advised the Applicant that he was going to stay in the Property until evicted.

Findings in Fact

1. The Applicant and the Respondent entered in to a tenancy agreement dated 24 March 2017. The period of the tenancy was from 27th March 2017 until 28 September 2017 at a weekly rental of £110.
2. The Applicant or her employees or representatives had hand delivered a Notice to Quit, AT6 and s33 Notice on 28 December 2017.
3. Service of the Notice to Quit had not been done by a valid method and therefore the Notice to Quit was invalid
4. The tenancy remained in force as a contractual tenancy for the time being.

Reasons for Decision

The Tribunal focussed primarily on the evidence before it regarding service of the Notice to Quit (an AT6 for breach had also been served but this basis for possession had been withdrawn in advance of the hearing. In any event, the Tribunal noted that the lease did not meet the requirements set out in RBS –v- Boyle 1999 and so would have been ineffective on its own aside from any issues regarding service).

The Tribunal noted the case of Govan Housing Association v Thomas Kane (A763/01) which noted that service in the correct manner was fundamental to the validity of a Notice to Quit. Without valid service the action must fail.

This led to the question, what constitutes valid service? Prior to the transfer of the jurisdiction from the Sheriff Court to the Tribunal, in this particular case service ought to have been affected in accordance with The Sheriff Court Act of Sederunt (Simple Procedure). In brief summary, this specifies that first an attempt must be done by recorded delivery which, if unsuccessful, should then be done by Sheriff Officer. It appeared to the Tribunal that it would be appropriate for it to be bound by the same standard of service as the Sheriff Court.

A Notice to Quit was a fundamental document that carried serious consequences for a tenant of a property. As Sheriff Johnston noted in the Govan case detailed above

“service of a notice to quit which is such a fundamental and important document for the purposes of recovery of heritable possession that it required to be served in the manner set out in 34.8 (*being a reference to the relevant Sheriff Court rules*) and that this did not brook any other method of service.”

Whilst the Tribunal did not question the honesty of the Applicant and accepted that they had delivered the notice by hand, nonetheless the Notice to Quit was fundamental and it would be open to abuse by some less scrupulous landlords if they could easily produce evidence of supposed hand delivery without some independent third party having been involved. The rules regarding service ensured the involvement of Royal Mail or Sheriff Officers and provided protection against abuse.

The Tribunal considered whether the letter produced by the Applicant bearing to be signed by the Respondent cured the defect in service. Whilst again the Tribunal did not query that this had been obtained by the Applicant in good faith, it was not sufficient to cure the defect in service. The Respondent was a foreign national and the Tribunal had no way of knowing if he had fully understood what he was signing. The Tribunal also noted that the Respondent’s wife was a named occupant on the Lease. In these circumstances the Tribunal was not prepared to accept the letter of acknowledgement of receipt of the Notice to Quit as sufficient to cure the defect.

Whilst the Tribunal had some sympathy for the position the Applicant found herself in, nonetheless the Tribunal felt it had no option but to dismiss the application.

The Tribunal did discuss the fact with the Applicant that this was simply a Case Management Discussion rather than a full hearing. A full hearing could be set in approximately six weeks, although there was a risk to the Applicant that a similar result would occur at a full hearing. The Applicant confirmed that they were content that the Tribunal dismiss the application at this stage and that they required to restart the process and serve a fresh Notice to Quit.

Decision

The Tribunal determined that the Notice to Quit served on the Respondent was invalid and therefore the application fell to be dismissed.

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.

Ewan Miller

Legal Member/Chair

23 / 8 / 18

Date