

Housing and Property Chamber First-tier Tribunal for Scotland



Decision with Statement of Reasons under Rule 38 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (SSI No 328)) (“the Procedure Rules”) in relation to a request for permission to appeal under section 46(3) (a) of the Tribunals (Scotland) Act 2014

In connection with

Chamber File Reference number: FTS/HPC/EV/19/1286

Re: Property at 6 Highthorne Crescent, West Kilbride KA23 9DN (“the Property”)

The Parties:

Crawford Property Rentals (“the Applicant”)

Alisdair Murray, Shea Sturgeon (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

1. DECISION

The Tribunal refuses to give permission to appeal in terms of Rule 38 of the Procedure Rules.

2. BACKGROUND

- a. The Applicant lodged an application for an eviction order with the First - tier Tribunal Housing and Property Chamber on 25 April 2019.
- b. On 9 May 2019 the Legal Member with delegated powers of the Chamber President rejected the Application made by the Applicant under Rule 8 of the Rules of Procedure.
- c. By letter dated 17 May 2019 received by the Tribunal on 20 May 2019, the Respondent applied to the Tribunal for permission to appeal the decision.
- d. The application states: "The application was rejected because the Notice to Leave was not posted two days before the start date of the Notice period, however, despite it being posted one day before the start of the Notice period, it was received by the tenants on the correct date as evidenced by the

enclosed Proof of Delivery provided by Royal Mail. You can see from the Proof of Delivery that the Notice was received and signed for on 13th February 2019 which is exactly 28 days before the date of exit, which was 13th March 2019, therefore, providing the tenants with the correct amount of notice according to the Scottish Government's stipulations." It contained as an attachment the signed for tracking confirmation showing the Notice to Leave was received by the Respondents on 13 February 2019.

- e. In terms of Rule 38 of the Procedure Rules, the Tribunal must determine whether to give permission to appeal on each ground.

3. REASONS FOR DECISION

- a. I do not consider that any point of law has been identified. Permission to appeal can only be made on a point of law.
- b. The reason for the application to appeal stated by the Applicant is that the Tribunal considered that service of the Notice to Leave took place after the date on which the Notice to Leave was signed for as received.
- c. The application does not state where the Tribunal erred in law making the decision to reject the application but rather states that the Tribunal applied a wrong date of service for the Notice to Leave. This is factually incorrect. The date of 13th February 2019 stated by the Applicant was accepted as the date Notice to Leave was served in the decision to reject the application.
- d. The Applicant goes on to say that the relevant date "of exit" is 13th March 2019, the day 28 days after the receipt by the Tenant of the Notice to Leave.
- e. What is required in the Notice to Leave in terms of S 62 (1) (b) of the Private Housing (Tenancies) (Scotland) Act 2016 is the entry not of the date on which the notice period expires but the date 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*".
- f. In terms of S 62 (4) of the Private Housing (Tenancies) (Scotland) Act 2016 "*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.*"
- g. Even by the Applicant's own calculation that date, falling on the day after the notice period expires, must be 14th March 2019. However the date entered in the Notice to Leave was 13th March 2019.
- h. These matters were set out fully in the decision to reject the application. The ground of appeal raises no point of law. Leave to appeal is refused.

4. APPEAL PROVISIONS

A party aggrieved by the decision of the tribunal may seek permission to appeal to the Upper Tribunal for Scotland on a point of law only. That party must seek permission to appeal within 30 days of the date the decision was sent to them. The request for permission to appeal must be in writing and you may wish to consult the Scottish Courts and Tribunals Service website which includes an application form with information on the details required.

A decision of the First-tier Tribunal relating to a permission to appeal request cannot be appealed or reviewed.

P Hennig McFatridge

**Petra Hennig McFatridge
Legal Member of the Tribunal
Dated:23 May 2019**