

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

Chamber Ref: FTS/HPC/EV/19/2489

Re: Property at 30 Linton Street, Riddrie, Glasgow, G33 2NB (“the Property”)

Parties:

**Mrs Catherine King, 83 Kirkintilloch Road, Bishopbriggs, Glasgow, G64 2AA;
Mr Gary Stephen King, 190 Kingsway, Kirkintilloch, G66 2UH (“the Applicants”)**

Ms Louisa Adamson, 30 Linton Street, Riddrie, Glasgow, G33 2NB (“the Respondent”)

Tribunal Members:

Nairn Young (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 for an eviction order against the Respondent, in relation to her private residential tenancy at the Property. It called for a case management discussion at 10am on 8 October 2019. The Applicants were present in person and were represented by Mr Stephen King. The Respondent was not present or represented.

- Findings in Fact

The following facts are not disputed:

1. The Respondent lets the Property from the Applicants in terms of a private residential tenancy commencing on 8 June 2018. On 8 July 2019, the Applicants sent a notice to the Respondent purporting to be a notice to leave in terms of s.62 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the

Act'). On that notice, the day specified as the day upon which the Applicants expected to become entitled to make an application for an eviction order to the First-tier Tribunal was 7 August 2019. The notice indicated that the grounds upon which eviction would be sought were: that the tenant has failed to comply with an obligation under the tenancy; and, that the tenant has been in rent arrears for three or more consecutive months. This application was submitted on 8 August 2019 accompanied by that notice and no other.

- Reasons for Decision

2. Section 52(2) of the Act states that, "The Tribunal is not to entertain an application for an eviction order if it is made in breach of subsection (3)." Subsection (3) states, "An application for an eviction order against a tenant must be accompanied by a notice to leave which has been given to the tenant."
3. A 'notice to leave' is defined at s.62 of the Act, which, among other features, requires the notice to specify, "the day upon which the landlord under the tenancy expects to become entitled to make an application for an eviction order to the First-tier Tribunal." Section 62(4) further requires that date to be, "the day falling after the day on which the notice period defined in section 54(2) will expire. Subsection (5) of the same section states that, "For the purposes of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.
4. Section 54 of the Act states:

" ...

- (2) The relevant period in relation to a notice to leave—

- (a) begins on the day the tenant receives the notice to leave from the landlord, and

- (b) expires on the day falling—

- (i) 28 days after it begins if subsection (3) applies,

- (ii) 84 days after it begins if subsection (3) does not apply.

- (3) This subsection applies if—

- (a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or

- (b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

...

(ii) that the tenant has failed to comply with an obligation under the tenancy,

(iii) that the tenant has been in rent arrears for three or more consecutive months...”.

5. On that basis, the day to be entered in the notice, in order to meet the requirements of s.62, is 8 August 2019. The notice is taken to have been received on 10 July 2019 (s.62(4)). The notice period therefore begins on that date. The notice period expires on the day falling 28 days after that, on 7 August 2019. 8 August 2019 is the day falling after that day. The notice in this case did not specify that date and is therefore not a notice to leave in terms of the Act. In terms of s.52 of the Act, the Tribunal is therefore unable to entertain the application.
 6. The Tribunal did not consider that the provision in s.73 of the Act that an error in the completion of a document to which that section applies, “does not make the document invalid unless the error materially affects the effect of the document,” was applicable to the notice in this case. That section states that it applies to, among other things, “a notice to leave (as defined by section 62(1)).” As has already been discussed, the notice in this case did not meet the requirements of s.62(1), so could not therefore meet that description.
- Decision

Application refused.

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.

Nairn Young
Legal Member/Chair

8th October 2019
Date