



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988 and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 as set down in the schedule of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Chamber Rules”)

Chamber Ref: FTS/HPC/EV/19/3614

Re: Property at 79 Dalriada Crescent, Motherwell, North Lanarkshire, ML1 3XT (“the Property”)

Parties:

AMPG LTD T/A Ahuja Holdings, U1, South Fens Business Centre, Fenton Chatteris, Cambridgeshire, PE16 6TT (“the Applicant”)

Mr Bartek Wolszczak, Unknown, Unknown (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member)

Decision (in absence of the Applicant and the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for an order for possession of the Property be refused.

- **Background**

An application was lodged with the Tribunal dated 8 November 2019 seeking repossession of the Property. The paper apart to the application form referred to the “Private Housing (tenancies Scotland) Act 2016” and the application form stated that the application proceeded in terms of Rule 65 of the Chamber Rules being an application for repossession in terms of Section 18 of the Housing (Scotland) Act 1988. Along with the form and paper apart, the Applicant’s representative lodged the following documents:

1. Copy tenancy agreement
2. Copy Notice to Quit
3. Copy section 11 Notice
4. Proof of Postage – hand delivery
5. Tenant Rent Statement
6. Consent Letter.
7. Copy AT5
8. Copy AT6

The Tribunal wrote to the Applicant's representative on 11 November 2019 requesting evidence that the Section 11 Notice had been served on the local authority. The Applicant's representative replied by email dated 12 November 2019 advising that the Section 11 Notice had been sent to the local authority by Royal Mail on 12 August 2019. The Tribunal wrote again on 27 November 2019 requesting that the reference to the 2016 Act be removed as the application appeared to be made in terms of the 1988 Act. The Tribunal also advised at that time that Royal Mail first class post was not an accepted method of service of the Section 11 Notice. The Applicant's representative emailed the Tribunal on 27 November 2019 to advise that the Section 11 Notice has also been emailed to the local authority. They advised they would revert shortly regarding the reference to the 2016 Act. The Applicant's representative then submitted an amended paper apart referring to the "Private Housing (tenancies Scotland) Act 1988."

The Tribunal wrote again to the Applicant's representative on 14 January 2020 asking for proof of service of the Notice to Quit and Section 33 Notice, clarification regarding the reference to the "Private Housing (tenancies Scotland) Act 1988" as this was muddled and did not give fair notice to the Respondent and asking for an amended paper apart to be lodged properly setting out the basis of the Application together with proof of service of the notices by recorded delivery or sheriff officer.

The Applicant's representative replied by email dated 28 January 2020 advising that the Notice to Quit and Section 33 Notice were sent "*by our own recorded delivery by way of hand delivering and recording the action by taking a digital picture (which was sent with the application) as the tenant had refused to sign using traditional royal mail recorded delivery*". An amended paper apart was lodged once again referring to the "Private Housing (tenancies Scotland) Act 2016."

The Tribunal wrote again to the Applicant's representative on 11 February 2020 providing a final opportunity for the Applicant's representative to clarify their application on the following matters:

1. "*Rule 65 only applies if you are seeking an order for possession for a tenancy under the Grounds of schedule 5 of the 1988 Act. You state the ground is ground 8. Is this what you are relying on? If this is the case please state this clearly and remove the references to the 2016 Act accordingly.*"
2. "*You have produced a S33 Notice and Notice to Quit which would indicate that you consider the tenancy to be a Short Assured Tenancy. If you have submitted these documents because you wish to apply for an order under S33 of the Housing (Scotland) Act 1988 rather than an order for possession under S18 of the Housing*"

(Scotland) Act 1988 please amend the application to an application under Rule 66 and state the ground for recovery of possession clearly in your amended application.

3. *You referred to Rule 109 which relates to eviction actions in terms of the Private Housing (Tenancies) (Scotland) Act 2016. If you consider that the tenancy is a tenancy under the 2016 Act and you wish to apply for an eviction order in terms of S51 of the Private Housing (Tenancies) (Scotland) Act 2016 you would have to submit a tenancy agreement which was entered into after 1 December 2017 and a Notice to Leave. If this is not the case please amend your application accordingly.*
4. *The Tribunal is unable to provide legal advice and it is the responsibility of any applicant to state on what basis they are applying for an order. You may wish to seek legal advice on the matter.”*

An amended application was submitted by the Applicant’s representative by email on 18 February 2020 stating that the application was made under Rule 66 and making reference to section 33 of the Housing (Scotland) Act 1988.

The Tribunal wrote again on 12 March 2020 noting the terms of the amended application and that this was now a Rule 66 application. The Tribunal also noted in this letter that the Notice to Quit was hand delivered and a photo provided. The Legal Member was of the view that proof of service requires to be provided by way of Sheriff Officers certificate of service or recorded delivery signed for confirmation. Submissions were requested from the Applicant’s representative to address this point.

The application was accepted and assigned to a Case Management Discussion on 21 August 2020. At the same time a Notice of Directions was issued addressed to the Applicant’s representative advising that he would be required to address the Tribunal as to validity of the method of service of the Notice to Quit and Section 33 Notice and was asked to provide the following evidence at least 7 days before the Case Management Discussion:

“Written evidence that the landlord had title and interest to grant the lease given that the title deeds show the owner of the subjects to be Ajay Ahuja while the landlord is Ahuja Holdings.”

The Case Management Discussion set down for 21 August 2020 required to be adjourned as Sheriff Officers were unable to serve the notification letter on the Respondent due to his no longer residing at the Property. Service of notification of the Case Management Discussion on 2 October 2020 took place thereafter on the Housing and Property Chamber Website. The Applicant’s representative was advised of today’s Case Management Discussion by letter dated 28 August 2020. He was advised that he was required to attend. He was also advised that *“The tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.”*

The Respondent has not been in touch with the Tribunal regarding the application. The Applicant's representative has not responded to the Notice of Directions issued by the Tribunal on 2 July 2020.

- **The Case Management Discussion**

Neither the Applicant nor the Respondent attended or were represented at the Case Management Discussion today despite having been notified.

- **Findings in Fact**

On the basis of the papers before it, and in the absence of either party dialling in, the Tribunal found:

The title and interest of the applicant granting the lease is unclear. The Landlord is stated to be Ahuja Holdings but the title to the Property is in the name of Ajay Ahuja.

The proof of service of the Notice to Quit and Section 33 Notices purports to be an undated photograph of an unidentified person posting a letter. This is not sufficient proof of service of the Notice to Quit and Section 33 Notice. The Applicant's representative was advised that he would require to provide submissions on the validity of this method of service. No such submissions have been received.

- **Reasons for Decision**

The Applicant's representative has been given many opportunities to clarify the basis for their application by the Tribunal. The Applicant's representative failed to respond to a Notice of Directions issued by the Tribunal (the date is stated on the Notice of Directions to be 2 July 2019 but this is clearly an error as it was sent to the Applicant's representative with a covering letter dated 3 July 2020.)

In addition, the title and interest of the Applicant to raise the application is unclear. Title deeds show that the owner of the Property is Ajay Ahuja. The application is made in the name of AMPG Ltd T/A Ahuja Holdings. The tenancy agreement states the Landlord to be Ahuja Holdings. The Notice of Directions dated 2 July required evidence to be lodged 7 days before the Case Management Discussion showing the landlord had title and interest to grant the lease in view of the above discrepancies. Such evidence was never lodged.

Despite the Applicant's representative being given many opportunities to clarify the application there remain fundamental issues with the designation of the applicant and their title and interest to grant the lease and with the evidence of valid service of the Notice to Quit and Section 33 Notice. In the absence of both parties phoning in to

today's Case Management Discussion, the Tribunal made a decision based on the information before it as it had sufficient information to do so and the procedure had been fair.

- **Decision**


The Tribunal refuses to grant the repossession order.

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.

Anne Mathie

2 October 2020


Legal Member/Chair

Date

