



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under sections 18 and 19 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/19/3269

Re: 73A Fulton Street, Glasgow, G13 1QQ (“the Property”)

Parties:

Mrs Donna McLaren, Flat 6, 7 Ferry Road Drive, Edinburgh, EH4 4BW (“the Applicant”)

Miss Joanne Potts, 73A Fulton Street, Glasgow, G13 1QQ, “the Respondent”)

Tribunal Members:

Adrian Stalker (Legal Member)

Decision (in absence of the Respondent)

The application is refused.

Background

1. In November 2014, the applicant let the property to the respondent, under an assured tenancy. The parties entered into a written tenancy agreement. This states, on page 1 of the agreement, that: “The Lease will be for the period of 6 months, beginning 10th November 2014 and will end on 10th May 2015. If this Agreement is not brought to an end by either party on the end date, it will continue thereafter on a two-monthly basis until terminated by either party given no less than two months’ notice”. The parties signed the tenancy agreement on 13 November 2014. The rent payable was then £550 per calendar month.

2. By an application received by the Housing and Property Chamber on 10 October 2019, the applicant sought an order for recovery of possession under section 18(4) of the Housing (Scotland) Act 1988, on grounds 10 and 11 of schedule 5 to the Act.

3. On 11 November 2019, a legal member having delegated powers accepted the application, and referred the case to the Tribunal for a hearing. However, the legal member identified certain issues with the application, which were listed in a letter to the applicant dated 12 November 2019. These were:

- (a) Whether the AT6 notice under section 19 of the Housing (Scotland) Act 1988 is valid, particularly in respect of whether it has complied with the statutory requirements for specification of the obligation referred to in ground 13.
- (b) Whether and if so how the AT6 notice was validly given – possible (non-excluding) methods of service being specified in section 54 of the 1988 Act.
- (c) The effect of section 19(1) and 19(2) on the application.
- (d) The validity of the notice to quit.

In the text that follows, these are referred to as “issue (a)” etc. The letter of 12 November states that the Tribunal expects to be informed about these questions, at the Case Management Discussion (“CMD”).

The CMD

4. The CMD took place at 11:30 am on 7 January 2020, at the Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT. The applicant appeared, along with Charlene McGhee, of TD Letting, of 9 William Street, Johnstone, the applicant’s letting agents. The Respondent did not appear, and was not represented. The Tribunal had sight of an execution of service from Sheriff Officers, confirming intimation of the case papers on the respondent.

5. Along with the application, the applicant had produced a copy of the tenancy agreement, a notice to quit to quit dated 23 May 2019, an AT6 (under section 19 of the Act) served on 4 December, and notice to the local authority (under section 19A of the Act).

6. The applicant had also produced a rent account statement prepared by TD Letting, which showed an arrears balance of £2,255.20, as at 28 October 2019. The statement indicates that the rent was increased to £585 per month, with effect from 28 June 2018. It is apparent that the tenant was largely able to keep up with rental payments, till September 2018. As 15 September 2018, there was an arrears balance of £57.10. However, four payments were missed in the period between the end of September 2018 and the end of June 2019, leading to an arrears balance of £2,397.10. In the months of August to October 2019 payments to rent account were made at the rate of £628.42, apparently through Universal Credit. These monthly payments, in excess of the rent, have had the effect of decreasing the arrears, by about £140, from the amount due at the end of June 2019.

7. The applicant confirmed that the tenant is still residing at the property. She lives there with her son, who the applicant believes to be about 7 years old. Ms McGhee confirmed that the level of arrears has gone down, since the end of October, to “about £2,200”.

8. The Tribunal explained that it was necessary to consider the issues that were raised by the legal member in the letter of 12 November.

Issue (d): validity of the notice to quit

9. It is convenient to take this issue first. The Tribunal suggested to the applicant and Ms McGhee that the notice to quit produced with the application appears to be invalid, as it states the wrong ish date. Given the clause as to the duration of the agreement, quoted in paragraph 1 above, the lease has, since 10 May 2015, been renewing every two months. Also in terms of that clause, the period of notice of termination was to be two months.

10. The notice to quit was dated 23 May 2019. Given the period notice, the earliest date on which the notice could have taken effect was 10 September 2019. However, the notice calls upon the respondent to leave “no later than 24th July 2019”. That is not an ish date of the tenancy, in terms of the parties’ agreement. In effect, the notice purports to terminate the parties’ agreement more than 6 weeks before the date on which the applicant is entitled to call upon the respondent to leave.

11. The applicant and Ms McGhee did not dispute that contention. Ms McGhee explained that there had been confusion when the notice was prepared, because the date on which the respondent was liable to pay the rent had changed.

12. As the notice to quit was invalid, the parties’ tenancy contract is still in operation. However, section 18(6) of the 1988 Act provides:

- (6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—
 - (a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, 10, 15 and 17; and
 - (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

In this case, the application is made on grounds 10 and 11. Given section 18(6)(a), the order cannot be granted on ground 10. In any event, that ground does not apply, because it is not the tenant who has given a notice to quit, but the landlord. However, the terms of tenancy do make provision for it to be brought to an end on

ground 11, which is stated, in full, at clause 18.4 of the parties' agreement. Therefore, as regards an application under ground 11, the conditions of section 18(6) are met, and an eviction order might be made under that ground.

13. The Tribunal also notes, in passing, that the Tribunal's papers included a section 33(1)(d) notice, which was dated 23 May, and bore to take effect on 24 July. The current application to the Tribunal was made under rule 65 and section 18 of the 1988 Act, rather than rule 66 and section 33. It would not have been possible, in any event, to grant an application under section 33, because the notice to quit was invalid, and the contractual tenancy is still in existence.

Issues (a), (b) and (c); the AT6 under section 19 of the 1988 Act

14. For present purposes, the relevant parts of section 19 of the 1988 Act are as follows:

19.— Notice of proceedings for possession.

(1) The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—

(a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or

(b) the Tribunal considers it reasonable to dispense with the requirement of such a notice.

(2) The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.

(3) A notice under this section is one in the prescribed form informing the tenant that—

(a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and

(b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.

...

15. Dealing with issue (c) first: Ms McGhee confirmed that the AT6 was hand-delivered to the respondent on 24 July 2019. She produced a document of that date, being an acknowledgement of the AT6, signed by the respondent. The Tribunal was satisfied that this was evidence of service having been effected, under section 54(a) of the 1988 Act.

16. However, the copy AT6 notice relies on grounds 10 and 13, not ground 11. At part 3 of the notice, where the reasons for seeking possession are stated, there is no mention of rent arrears. It is simply said: "You have not vacated the property, as stated in the section 33 notice to quit served to you ending 24 July 2019."

17. Accordingly, an AT6 notice has been served, as is required by section 19(1). However, under section 19(2), the Tribunal cannot grant an order under ground 11, on the basis of the respondent's rent arrears, unless ground 11 is added to the AT6, with the leave of the Tribunal.

18. After careful consideration, the Tribunal decided not to grant leave to add ground 11 to the AT6, for the following reasons.

19. Firstly, and most importantly, the applicant and Ms McGhee candidly accepted that the respondent was not informed, at any time prior to the lodging of this application, whether verbally or in writing, that an order for possession was going to be sought on the basis that the respondent had arrears of rent. The applicant recalled, in particular, visiting the property in October 2019, to discuss the tenancy with the respondent. At that time, the applicant was under the impression that the respondent would have to leave, because the notice to quit and section 33 notice had been served on her. At that time, the parties did not discuss the possibility that an application would be made to the Tribunal on the ground of rent arrears.

20. Secondly, the papers served on the respondent in May and July 2019 were such as to create the impression that she would have to leave the tenancy, because certain notices were served on her, and that she had no defence to any application that might be made to the Tribunal. That impression is misleading. Ground 11 is discretionary. It is apparent that, in recent months, the rent has been paid, and if anything, the arrears are decreasing. Accordingly, the tenant may well have an argument that it would not be reasonable to grant the order under section 18(4) of the Act. Perhaps, if she was aware that an order was sought on the basis of rent arrears, she could have arranged for some of the arrears to be paid off, by borrowing or otherwise.

21. The purpose of the statutory notice is to give information to the tenant to enable her to consider what should be done, in the period before proceedings are raised, which is in her power and which will best protect her against the loss of her home: *Mountain v Hastings* (1993) 25 HLR 427. That information has never been given to the respondent in this case.

Decision

22. For these reasons, the Tribunal was not prepared to exercise its power, under section 19(2), to allow the AT6 to be altered by the addition of ground 11.

Accordingly, it cannot make an order under that ground. The only other ground stated in the application was ground 10. An order cannot be granted on that ground for the reasons already stated.

23. Accordingly the application is 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.

A. S

Legal Member/Chair

Date

07/01/20.