



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/23/2123

Re: Property at 18/2 Captains Drive, Edinburgh, EH16 6QW (“the Property”)

Parties:

Mrs Janice Blackley, 88 Fords Road, Edinburgh, EH11 3HT (“the Applicant”)

Miss Louise Solway, 18/2 Captains Drive, Edinburgh, EH16 6QW (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

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

1. Background

1.1 This is an application under Rule 109 of the Chamber Rules whereby the Applicant sought an order for the eviction of the Respondent who resided at the property by virtue of a private residential tenancy due to substantial rent arrears. The application was accompanied by, amongst other things, a purported notice to leave given to the Respondent. A linked application for payment of the rent said to be outstanding had also been submitted by the Applicant (reference FTS/HPC/CV/23/2126).

1.2 A request for further information had been made by the Tribunal. Included within this was a request for representations as to the validity of the notice to leave, given an apparent error in the date inserted at part 4 on or after which the Applicant would be entitled to bring an application. 31 May 2023 had been entered as opposed to 1 June 2023, which appeared to the Tribunal to be the correct date.

1.3 A response from the Applicant's then representative was received dated 10 August 2023, addressing all aspects of the request for further information. No representations had been received at any stage from the Respondent.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 9 November 2023 by teleconference. The Applicant attended personally and was not represented. The Respondent was neither present nor represented.

2.2 The Applicant confirmed that she wished to proceed with the present and linked application. The Tribunal noted that intimation of the Case Management Discussion had been given to the Respondent and considered it appropriate to proceed in her absence, as permitted by Rule 29 of the Chamber Rules.

2.3 The Tribunal confirmed with the Applicant that she was not to be represented. Although correspondence had previously been received from Clarity Simplicity solicitors on her behalf, they were no longer acting for her.

2.4 The Tribunal noted that the Applicant was not fully aware of the issue with the notice to leave that had been the subject of the request for further information. She had been advised that the application had been accepted. She did not have a full copy of the all the case papers before her.

2.5 The Tribunal adjourned for a short period of time to allow the case papers to be emailed to the Applicant. Following this adjournment, the Tribunal took the Applicant through the relevant papers, namely, the notice to leave, the request for further information insofar as it referred to the notice to leave and the representations lodged by Clarity Simplicity solicitors.

2.6 The Applicant did not have anything further to add in respect of the representations beyond the factual circumstances as they pertained to the tenancy. She was 71 years of age. The notice to leave had been prepared by her then solicitor. The Respondent worked full time but had ceased to pay rent. The total sum outstanding was now in excess of £21,000.00.

2.7 The Tribunal proceeded to refuse the application on the basis that a valid notice to leave had not been served on the Respondent. The determination in respect of the linked application can be found in the written decision pertaining to it.

3. Reasons For Decision

3.1 The Tribunal's power to issue an eviction order is constrained by section 52 of the 2016 Act, which is in the following terms:-

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of [sections 54 to 56](#) (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of [section 54](#) if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

The Tribunal cannot entertain an application where it is not accompanied by a copy of a notice to leave.

3.2 A notice to leave is defined by section 62 of the 2016 Act as follows:-

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day 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,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) 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.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Thus, a notice to leave must contain the date on which the landlord becomes entitled to make an application for an eviction order, being the date **after** the relevant notice period had expired. In the present application, the relevant notice period expired 28 days after the notice was received. As the notice to leave had been served validly on the Respondent on 3 May 2023, the period of notice expired on 31 May 2023 and the date that therefore ought to have been specified was 1 June 2023.

- 3.3 The Applicant's then solicitors, in their representations of 10 August 2023, conceded that there was an error in the date entered. Essentially, they put forward two arguments as to why it ought to be considered valid, allowing the application to proceed. Firstly, that the Tribunal had a power under section 52 of the 2016 Act to allow an application to be made in breach of section 54 where it was reasonable to do so. Secondly, section 73 of the 2016 Act allowed for minor errors in documents to be overlooked where the material effect of the document is not affected. In the present case, an error of only one day had been made in the calculation of the date. The application had not been made before the expiry of the correct period of notice in any case. Accordingly, there was no prejudice to the Respondent.
- 3.4 The Tribunal did not agree that section 54 assisted the Applicant. Section 53 of the 2016 Act essentially allows for the Tribunal to permit applications to be made before the expiry of the notice period, where it is reasonable to do so. Section 54 makes no reference to errors in completion of the notice to leave and does not, in the Tribunal's opinion, confer a power upon the Tribunal to overlook such an error where reasonable to do so. The present application was not made during a notice period and section 54 does not apply.
- 3.5 Section 73 of the 2016 Act could potentially apply to an error in completion of a notice to leave. The issue was whether the incorrect date entered materially affected the effect of the notice to leave. In the Tribunal's opinion, it did. The notice to leave gives the tenant notice of when an application could be made to the Tribunal by a landlord should they fail to leave the property. By entering a date too early, the tenant is in danger of being misled and leaving the property before they would be required to. Thus, the effect of the notice, in light of the error, can be said to be materially effected. Reference is made to the previous decision of *Holleran v McAlister* FTC/HPC/EV/18/3231.
- 3.6 The notice to leave served on the Respondent in the present case does not conform with the requirements of section 62 of the 2016 Act. Accordingly, valid notice to leave has not been given to the Respondent nor does it accompany the present application which must be 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 Houston

9 November 2023

Legal Member/Chair

Date