



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

Chamber Ref: FTS/HPC/EV/23/1630

Re: Property at Flat 1/2, 42 Grant Street, Glasgow, G3 6HN (“the Property”)

Parties:

Mr Subhan Ali, 20 A Third Gardens, Glasgow, G41 5NF (“the Applicant”)

Mr Kyle Thompson, Mr David Little, Flat 1/2, 42 Grant Street, Glasgow, G3 6HN; Flat 1/2, 42 Grant Street, Glasgow, G3 6HN (“the Respondents”)

Tribunal Members:

Nairn Young (Legal Member) and Mary Lyden (Ordinary Member)

Decision

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 Respondents, who occupy the Property in terms of a private residential tenancy agreement with the Applicant. It called for case management discussion (‘CMD’) at 2pm on 20 November 2023, by teleconference. The Applicant was represented on the call by Mr Ahmed, of The Property Store. The first-named Respondent was on the call in-person and spoke on behalf of both Respondents.

- Findings in Fact

The essential facts on which the decision was made in this case were not in contention between the parties:

1. The Property is let to the Respondents by the Applicant in terms of a private residential tenancy with a start date of 11 October 2021.

2. Clause 4 of that tenancy agreement states (so far as is relevant):

“The landlord and the tenant agree that all communication which may or must be made under the Act and in relation to this Agreement, including notice to be served by one party on the other will be made in writing using:

hard copy by personal delivery or recorded delivery; or
the email addresses set out in clauses [2 or 3] and 1].”

3. Directly next to the lines of text in clause 4 setting out the alternative methods of service, there is a large box, extending across both lines, with an ‘x’ placed in it; and a further line next to that stating: “By email”.
4. No email addresses are set out in clauses 1, 2 or 3 of the agreement.
5. On 24 August 2022, the Applicant’s agent sent a notice to leave to the Respondents at two email addresses only.
6. The expiry date for the notice to leave was 19 November 2022.
7. This application was made on 27 June 2023.

- Reasons for Decision

8. This application is refused because it attempts to proceed on the basis of a notice to leave that has not been given to the Respondents, within the terms of the legislation governing these matters. Section 52 of the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act') states (so far as is relevant):

"52 Applications for eviction orders and consideration of them

...

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

(a) subsection (3)

(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."

Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 states (so far as is relevant):

"26 Service of documents

(1) This section applies where an Act of the Scottish Parliament or a Scottish instrument authorises or requires a document to be served on a person (whether the expression "serve", "give", "send" or any other expression is used).

(2) The document may be served on the person—

(a) by being delivered personally to the person,

(b) by being sent to the proper address of the person—

(i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 (c.26)), or

(ii) by a postal service which provides for the delivery of the document to be recorded, or

(c) where subsection (3) applies, by being sent to the person using electronic communications.

(3) This subsection applies where, before the document is served, the person authorised or required to serve the document and the person on whom it is to be served agree in writing that the document may be sent to the person by being transmitted to an electronic address and in an electronic form specified by the person for the purpose.”

9. Notwithstanding the text of clause 4 of the agreement apparently wishing to allow for email service, the fact that no email address was specified in the tenancy agreement (or in any other agreement) to which notices could be given (or served, or sent), as required by s.26(3), therefore meant that that form of service was not available. It follows that the Tribunal cannot entertain the application, since that was the only form of service attempted of the notice to leave.

10. The Tribunal noted further that, even if it had considered the notice had been served and the notice period thereby commenced, the application would have been made more than 6 months after the expiry of that notice period. The application was not ‘made’ until it was received in a form compliant with the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017. In this case, that did not happen until 27 June 2023.

- 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.



20 November 2023

Legal Member/Chair

Date