



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

Reference number: FTS/HPC/EV/23/2087

Re: Property at 14 Greenpark, Edinburgh, EH17 7TA (“the Property”)

Parties:

Mr Keir Hawkins, residing at 64 Riverside Road, Glasgow, G76 0DG,
and

Mr Greg Hawkins, residing at 30 Lochmaben Crescent, Cambuslang, Glasgow, G72 8ZA (“the Applicants”)

Ms Nicki Skelton, residing at 14 Greenpark, Edinburgh, EH17 7TA (“the Respondent”)

Tribunal Members:

Paul Doyle (Legal Member)
Sandra Brydon (Ordinary member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismisses the application.

Background

1. The Applicant sought recovery of possession of the Property in terms of Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (the "2016 Act"). On 19 October 2023 the Applicant lodged Form E with the Tribunal. The documents produced were a Tenancy Agreement dated 14/04/2021; a Notice to Leave, and a Notice in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003. A copy title sheet was lodged with the Tribunal which showed that the applicant is the heritable proprietor of the Property.

2. The applicants are represented by Mr C Duffy of CP Property Ltd. The respondent is represented by Mr J Ballantine, solicitor, of Shelter Scotland. A case management discussion took place on 20/02/2024, after which directions were issued to the parties and the case was continued to an evidential hearing to take place on 09/05/2024.

3. Written submissions were lodged for the applicants on 21/03/2024. The applicants sought leave to amend the grounds for repossession. For the respondent written submissions were lodged on 25/04/2024. In written submission, the respondent says that the notice to leave is defective in form because it was neither signed nor dated.

Preliminary matters.

4. In written submission, the respondent says that the notice to leave is defective in form because it was neither signed nor dated.

5. For the applicants, Mr Duffy immediately conceded that the notice to leave is defective in form. He explained that a mistake had been made and told the tribunal that he wished the mistake had come to light earlier.

Decision and reasons

6. We are grateful to Mr Duffy for his candour. Parties agree that the notice to leave is invalid.

7. Section 52(2)(a) of the 2016 Act says that the Tribunal is '*not to entertain*' an application for an eviction order if it has not been accompanied by a copy of a Notice to Leave given to a tenant. Section 62 of the 2016 Act provides the meaning of a Notice to Leave.

8. Regulation 6 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 ('the 2017 Regulations') sets out the requirements for a valid notice to leave. The correct form has been used by the applicants, but at Part 4 of the prescribed form there is a signing tab which must be signed and dated.

9. Parties agree that the notice to leave received by the Respondent was unsigned and undated at Part 4.

10. Because Regulation 6 has not been complied with, the notice is not compliant with section 62 (1) (d) of the 2016 Act. It is not a notice to leave within the meaning of the 2016 Act.

11. That fundamental flaw means that the application must be dismissed.

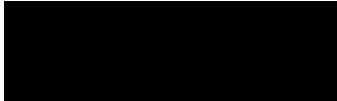
Decision

For the foregoing reasons, the Tribunal dismiss the application.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.



Legal Member P. Doyle

09 May 2024