



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 52 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/3440

Re: Property at 1/1 16 Blochairn Place, Glasgow, G21 2EE (“the Property”)

Parties:

Mr Popoola Akande, 22 Wellsgreen Court, Glasgow, G71 7UZ (“the Applicant”)

Mr Chukwuma Brendan Njoku, 1/1 16 Blochairn Place, Glasgow, G21 2EE (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

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 Respondent, brought on the basis that he is alleged to occupy the Property in terms of a private residential tenancy agreement with the Applicant. It called for a case management discussion at 10am on 10 May 2024, by teleconference. The Applicant was represented on the call by Mr Bernard Odukudo. The Respondent was on the call in-person.

- Reasons for Decision

1. A preliminary matter that required to be determined by the Tribunal was the question of whether or not a notice to leave had been validly served on the

Respondent. It was the Applicant's own position that the only methods of service of the notice attempted were by sending photographs of the pages of the notice by WhatsApp and by sending an electronic copy by email at a later date.

2. Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out definitively the means by which service of documents may be effected, as follows (so far as is relevant here):

“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

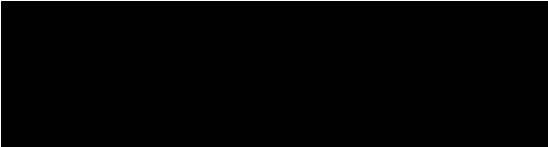
sent to the person by being transmitted to an electronic address and in an electronic form specified by the person for the purpose.”

3. It is not suggested by the Applicant here that there was any written agreement in terms of s.26(3). It follows that electronic communication is not a valid mode of service in this case.
 4. Section 52(2) of the Private Housing (Tenancies) (Scotland) Act 2016 is, in turn, clear that the Tribunal is not to entertain an application that is not accompanied by a notice to leave sent by an applicant to the relevant respondent. The Tribunal therefore refuses this application.
- 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.


N.Young

Legal Member/Chair

10th May 2024

Date