



**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/24/1825**

**Re: Property at 32B Union Street East, Arbroath, DD11 1BS (“the Property”)**

**Parties:**

**Mr Michael Robertson, 2 Holly Drive, Stonehaven, AB39 2GU (“the Applicant”)**

**Ms Paige Easton or Fletcher, 32B Union Street East, Arbroath, DD11 1BS (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision (in absence of the Respondent)**

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

**Background**

1. On 21<sup>st</sup> April 2024 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Grounds 4, 12 and 12A of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the Act”).
2. Lodged with the application were: -
  - i. Copy Lease showing a commencement date of 31<sup>st</sup> August 2022 and a rent of £500 per month;
  - ii. Copy Amended Lease showing a commencement date of 1<sup>st</sup> October 2022 and a rent of £500 per month, amended to show the Respondent’s name change;
  - iii. Copy Notice to Leave dated 21<sup>st</sup> December 2023;
  - iv. Copy Notice to Leave dated 11<sup>th</sup> March 2024;
  - v. Proof of service of iv;
  - vi. Affidavit by Applicant dated 4<sup>th</sup> April 2024;

- vii. Rent Statement;
  - viii. Section 11 Notice and proof of service;
3. The Application was accompanied by a detailed Statement of Claim prepared by Thorntons. This outlined that the Applicant had served the first Notice to Leave by hand, but could not prove it. The Statement of Claim sought that the Tribunal use its power under section 52(4) of the Act to allow the application although it had been lodged with the Tribunal before the second Notice to Leave had expired. The Statement of Claim also confirmed that the Applicant had not complied with the Pre Action Requirements in terms of the Coronavirus (Recovery and Reform)(Scotland) Act 2022.
  4. The Application was served on the Respondent by Sheriff Officers on 17<sup>th</sup> June 2024.
  5. On 14<sup>th</sup> July 2024 the Applicant's solicitor lodged an up to date rent statement.

### **Case Management Discussion**

6. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Miss Cooper of Thorntons, Solicitors. The Applicant was also on the call. There was no attendance by the Respondent or any representative on her behalf.
7. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed satisfy the Tribunal that the application should be allowed to proceed given that it had been lodged before the Notice to Leave had expired, before the Tribunal could consider the grounds for eviction.
8. Miss Cooper said that two Notices to Leave had been served. The Tribunal observed that the Applicant could not prove that he had served the first notice. Miss Cooper replied that there was nothing stated to the contrary to say that it had not been served. She confirmed that it had been hand served. She said that the second Notice to Leave had been served by Sheriff Officer. The application had been lodged with the Tribunal slightly in advance of the expiry of the Notice based on the urgency of the Applicant's circumstances. He had separated from his partner and required to live in the let property. He had a six year old child and needs an address to move to. She did not say that the child would be moving with him. She said that the Respondent had not lodged any written defence and had not attended the case Management Discussion.
9. The Tribunal noted that both leases were very brief, and did not follow the model Private Residential Tenancy Agreement provided for in the Act. The Applicant said that he had used an old template. He had been renting the property out for twelve years and had not updated things. He did not have any other rental properties. He also said that it had taken over eight months to get to this point in the eviction process and it was urgent.

10. The Tribunal asked the Applicant to confirm when his relationship had broken down. He was quite vague and said it was probably around the last week in March 2024. He was currently living between the spare room and his parents' house.
11. The Tribunal adjourned briefly to consider matters.
12. After the adjournment the Tribunal asked for some clarification regarding complying with the pre action requirements. Miss Cooper said that compliance was not mandatory, and non-compliance does not render an action incompetent. The Applicant had not complied with the requirements because of the urgency of the situation. The Tribunal asked her to confirm what she meant by the urgency, and she said that it related to the Applicant's separation. She conceded that the Applicant had not complied with the pre action requirements prior to serving the first Notice to Leave.
13. Miss Cooper also clarified that the Applicant and his partner had been experiencing difficulties for some time, and it was in the last week of March 2024 that it became apparent that they could no longer be together.

## Findings in Fact

- a. The parties entered into a lease in respect of the property commencing 31<sup>st</sup> August 2022 with a rent of £500 per month;
- b. Copy Notice to Leave dated 11<sup>th</sup> March 2024 was served on the Respondent;
- c. The Notice to Leave stated that an application to the Tribunal could not be made before 4<sup>th</sup> June 2024;
- d. The Application was lodged with the Tribunal on 21<sup>st</sup> April 2024.

## Reasons for Decision

14. Section 52 of the Act states

*(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.*

15. Section 54 of the Act states

*(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

*(2) The relevant period in relation to a notice to leave—*

*(a) begins on the day the tenant receives the notice to leave from the landlord, and*

*(b) expires on the day falling—*

*(i) 28 days after it begins if subsection (3) applies,*

*(ii) 84 days after it begins if subsection (3) does not apply.*

*(3) This subsection applies if—*

*(a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or*

*(b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(i) that the tenant is not occupying the let property as the tenant's home,*

*(ii) that the tenant has failed to comply with an obligation under the tenancy,*

*(iii) that the tenant has been in rent arrears for three or more consecutive months,*

*(iv) that the tenant has a relevant conviction,*

*(v) that the tenant has engaged in relevant anti-social behaviour,*

*(vi) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.*

*(4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).*

16. The Tribunal had to consider the preliminary motion made by the Applicant to allow the application to be lodged before the expiry of the period of notice of the Notice to Leave. If the Tribunal were not prepared to grant it the Application could proceed no further. The application was lodged around six weeks before the Notice expired.
17. The Tribunal read and considered all the papers, including the Statement of Claim, prior to the CMD. It also considered the submissions made during the CMD.
18. Section 52(2) of the Act says that the Tribunal is not to entertain an application order if it made in breach of subsection (3) or any of sections 54 to 56. Section 54(1) says that a landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice. Section 52(4) says that the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.
19. The Act does not give any guidance as to what is “reasonable”. Miss Cooper did not provide any authority in relation to what is reasonable. The Tribunal looked at all the circumstances. The Applicant was asking the Tribunal to disapply the law for his benefit. The Applicant had not followed the law in relation to providing the correct tenancy agreement, nor had he followed the law in relation to the pre action requirements. Miss Cooper did submit that these were not mandatory, but one of the grounds of eviction was Ground 12A, and it requires the Tribunal to look at compliance with the pre action requirements when considering the reasonableness of the eviction.
20. Miss Cooper also submitted that there was an urgency to the situation due to the Applicant separating from his partner. From his own answer to the Tribunal the Applicant was not homeless. There was no suggestion that his six year old child would be homeless. The Applicant also said that there was an urgency as the process had taken over eight months already. If the Applicant had followed the correct procedure at the outset it would not have taken that length of time. He also appeared to have instructed that the Notice to leave be served, 11<sup>th</sup> March 2024, before the relationship had come to an end, at the end of March 2024.
21. The Tribunal noted that the Respondent had not lodged a written defence and had not appeared at the CMD. The Tribunal did not consider that to be a factor in weighing up whether it was reasonable to disapply the law for the Applicant.

22. Having considered all the points made the Tribunal did not consider it reasonable to entertain an application made in breach of section 54.

### **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.**

# Alison Kelly

22<sup>nd</sup> July 2024

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**Legal Member/Chair**

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**Date**