



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 23 of the Rent (Scotland) Act
1984**

Chamber Ref: FTS/HPC/EV/24/0872

Property : 3/3, 22 Maxwellton Street, Paisley PA1 2UB (“Property”)

Parties:

Grish Kumar Sharma, Broadstones, 17 High Calside, Paisley PA2 6BY (“Applicant”)

Bannatyne Kirkwood France & Co, 16 Royal Exchange Square, Glasgow G1 3AG (“Applicant’s Representative”)

Elis Dodd, 3/3, 22 Maxwellton Street, Paisley PA1 2UB (“First Respondent”)

Lisa McInnes, 3/3, 22 Maxwellton Street, Paisley PA1 2UB (“Second Respondent”)

Aliyah Dodd (formerly known as Aubad) 3/3, 22 Maxwellton Street, Paisley PA1 2UB (“Third Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to make an order for possession of the Property.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Tenancy Agreement which commenced on 11 August 2022; a document titled Renunciation and Notice of Termination dated 9 and 13 November 2023 which stated that the tenancy would terminate on 11 January 2024 and notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 20 February 2024. The Tribunal had sight of a sheriff officer’s execution of service certifying service of the Application on 13 June 2024.

On 15 June 2024 the First Respondent lodged a written representation stating that the Renunciation and Notice of Termination was invalid as the signatures had not been witnessed by independent third parties. There was attached to the email a copy email from Gillian Matthew of the Applicant's Representative dated 21 November 2023. On 27 June 2024 the Applicant's Representative lodged a written representation stating that the Renunciation and Notice of Termination was valid. On 28 June 2024 the First Respondent lodged a further written representation in which he stated that in the absence of the Applicant having signed the Renunciation and Notice of Termination, the document was invalid.

In this Decision : the Private Housing (Tenancies) (Scotland) Act 2016 is referred to as the "2016 Act"; the Rent (Scotland) Act 1984 is referred to as the "1984 Act" and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 are referred to as the "Regulations".

Case Management Discussion

A case management discussion ("CMD") took place before the Tribunal on 19 July 2024 by teleconference. The Applicant was in attendance and was represented by Alexandra Wooley of the Applicant's Representative. The First, Second and Third Respondents were in attendance. The Second and Third Respondent told the Tribunal they were content for the First Respondent to speak on their behalf.

Mr Dodd told the Tribunal that he and the Third Respondent were now married and she is now known as Aliyah Dodd. Mr Dodd said there had been issues about the deposit for the Property in that it had not been lodged in an approved scheme. He said he raised this with the Applicant and after a while the Applicant offered the Respondents money to leave the Property. He said that the £2100 referred to in the renunciation document had not been paid but his understanding was that it would only be paid once the Property was vacated and the keys returned to the Applicant. The Tribunal asked Mr Dodd if he was opposing the application. He said that he thought he had to as the renunciation document was not properly witnessed. He said that Gillian Matthew of the Applicant's Representative had said the document was not properly witnessed.

Ms Wooley said that what Mr Dodd had said was generally correct. She said it had been agreed that the Respondents would leave the Property on 11 January 2024 and the payment of £2100 would be made once the Property was vacated. She said that as the Respondents had not vacated on the agreed date, the payment of £2100 would not be made. Ms Wooley said that the communication from her colleague regarding the witnessing of the renunciation document was sent purely in an effort to ensure the document was probative but there was no necessity for the document to be probative.

The Tribunal asked Mr Dodd why he did not wish to proceed in accordance with the renunciation document. He said he did want to proceed and to leave the Property but the timing was not convenient. The Tribunal asked about the process of agreeing the renunciation document. Mr Dodd said that a draft was sent to him by the Applicant's Representative by email. He said he had no comments on the draft and the final document was sent to him for signature. He said it was signed by the Respondents and sent back to the Applicant's Representative. He said that the Applicant's Representative then raised the issue about the witnessing of the document and he thought if he left the Property then he would still be bound to the Applicant. He said he asked for another document to sign but it was never sent to him. He said that the communications thereafter from the Applicant's Representative were only about vacating the Property.

Ms Wooley said that a fresh renunciation document was sent to the Respondents for signing and was chased up on multiple occasions.

The Tribunal asked Mr Dodd if the renunciation document had been signed following coercion. He said there was no question of coercion. He said the Respondents are keen to leave the Property as soon as they find somewhere else to live. He said he had been in touch with Renfrewshire Council who had said the granting of the possession order would assist his housing application. He said he had looked at numerous alternative properties. The Tribunal asked Mr Dodd what he would have the Tribunal do. He said that he wanted the order to be granted if the Tribunal thought that was the right thing to do. The Tribunal explained that in an application for a possession order on the basis the occupier has no right or title to occupy, the question of reasonableness does not arise.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the First Respondent entered into a Tenancy Agreement for the Property which commenced on 11 August 2022.
2. The First Respondent signed a Renunciation and Notice of Termination on 9 November 2023 which stated that the tenancy would terminate on 11 January 2024.
3. The Second Respondent signed a Renunciation and Notice of Termination on 13 November 2023 which stated that the tenancy would terminate on 11 January 2024.

4. The Third Respondent signed a Renunciation and Notice of Termination on 9 November 2023 which stated that the tenancy would terminate on 11 January 2024.
5. The Tenancy between the Applicant and the First Respondent came to an end on 11 January 2024.
6. The Respondents continue in occupation of the Property without right or title to do so.
7. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 20 February 2024.

Reasons for the Decision

The First Respondent was the sole tenant in terms of the tenancy agreement entered into by the Applicant and the First Respondent. It contained a prohibition on assignment and subletting. The tenancy commenced on 11 August 2022 and therefore was a private residential tenancy (“PRT”) in terms of the 2016 Act although it was not in the format of the “model form”.

The Respondents each signed a Renunciation and Notice of Termination which stated that the tenancy would terminate on 11 January 2024. The Renunciation and Notice of Termination narrated that the Applicant was landlord and the First Respondent was tenant under a tenancy agreement dated 11 August 2022. It narrated that in return for a payment of £2100 the First Respondent renounced any right to occupy the Property with effect from 11 January 2024. The Parties agreed that the payment of £2100 would be made when the keys to the Property were returned to the Applicant.

Clause 3.2 of the Renunciation and Notice of Termination states :

“The Tenant hereby gives notice to terminate the Tenancy Agreement as at the Renunciation / Expiry Date”.

The “Renunciation / Expiry Date” was defined as being 11 January 2024.

A tenant can terminate a PRT in terms of sections 48 of the 2016 Act by giving the landlord a notice which fulfils the requirements described in section 49 of the 2016 Act. In terms of section 48(2) the tenancy will come to an end on the day on which the notice states that it is to come to an end.

Unlike the notice to leave that may be issued by a landlord under the 2016 Act, there is no prescribed form for the notice issued by the tenant. What is required is that it fulfils the requirements described in section 49 which are :

1. The notice is given freely and without coercion of any kind.
2. The notice is given after the tenant begins occupying the let property.
3. The notice is in writing.
4. The notice states as the day on which the tenancy is to end, a day that is after the last day of the minimum period of notice. (The notice period is 28 days unless otherwise agreed in writing).

The First Respondent told the Tribunal there was no question of coercion. The Renunciation and Notice of Termination was signed after the Respondents began occupying the Property. The Renunciation and Notice of Termination fulfils the four requirements set out in section 49 of the 2016 Act.

In the written representations lodged by the First Respondent he stated that the Renunciation and Notice of Termination was invalid as the signature of each Respondent had been witnessed by another of them and as the Renunciation and Notice of Termination had not been signed by the Applicant. The purpose of having a document witnessed is to render the document probative. There is however no requirement for the notice of termination which may be given by a tenant to a landlord to be probative. There is also no requirement for the notice given by the tenant to be signed by the landlord.

If a tenant does not vacate a let property following expiry of a notice given by the tenant under section 48 of the 2016 Act, the landlord cannot evict under section 51 of the 2016 Act as no ground for eviction has been established. The landlord would require to seek recovery of possession of the property on the basis the tenant continued to occupy after the termination date without right or title to do so in terms of section 23 of the 1984 Act. The Tribunal has jurisdiction to deal with such an application in terms of section 71 of the 2016 Act and section 79 of the Regulations.

Decision

The Tribunal determined to grant an order for possession of the Property.

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.

J.Devine

Legal Member:

Date: 19 July 2024