



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/23/4190

Re: Property at 16 Woodburn Road, Falkirk, FK2 9BP ("the Property")

Parties:

Felicity Brennand, 164d Wongawallan Rd, Tamborine Mountain, Queensland, Australia ("the Applicant")

Ms Mussarat Tahir, 16 Woodburn Road, Falkirk, FK2 9BP ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

At the Case Management Discussion ("CMD"), which took place by telephone conference on 15 August 2024, the Applicant was present and was represented by Mr David Richardson of Urban Property. The Applicant's husband, Mr Peter Brennand, was also present. The Respondent was in attendance and was represented by her son, Mr Tanveer Aslam. Mr Aslam's wife, Mrs Shafia Aslam, was also present as a supporter.

The Applicant and her husband separately dialled into the call from their home in Queensland, Australia. Their calls frequently dropped out during the proceedings and on each occasion the Tribunal paused the CMD to allow them to rejoin before proceeding further.

The Applicant addressed the Tribunal directly during the CMD and the Tribunal, unusually, allowed both Mr Richardson and Mr Brennand to address the Tribunal on her behalf in the interests of justice. Mr Aslam spoke on behalf of the Respondent throughout.

Prior to the CMD the Tribunal had received the following additional written submissions:-

- Email from Mr Aslam dated 14 August 2024 with attachments.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

The Tribunal noted the following background:-

- i. The Applicant is the heritable proprietor of the Property.
- ii. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 5 April 2021.
- iii. On 20 July 2023, the Applicant's representative, Mr Richardson, purported to serve on the Respondent by email a Notice to Leave requiring the Respondent remove from the Property by 16 October 2023. The email address to which the Notice to Leave was sent was that of her son, Mr Tanveer Aslam.
- iv. The Applicant has served on Falkirk Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- v. The application proceeds on the basis of Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016, namely that the Applicant intends to sell the Property.

The CMD

At the CMD the Applicant, Mr Richardson and Mr Brennand variously made the following submissions in support of the application in response to questions from the Tribunal:-

- i. The Tribunal asked why the Applicant intended to sell the Property, there being no explanation within the application and associated papers. The Applicant and her husband are in their late 60s and in their retirement they no longer wish to have properties in the UK which are difficult to manage from a distance. The Property is the sole property in the UK in the name of the Applicant. The Applicant and Mr Brennand jointly own another 4 properties in the UK, one of which is vacant, two of which are in the course of becoming vacant and one of which is on the market for sale. Another property owned by the Applicant and Mr Brennand had sold approximately 2 years ago. The Applicant had hoped to put the Property on the market for sale around 18 months ago. The Applicant and her husband own their own domestic property in Australia over which there is a substantial mortgage which they intend to pay off from proceeds of the sale of their property assets in the UK, including the Property.
- ii. The Tribunal asked about service of the Notice to Leave. Mr Richardson stated that the Notice to Leave was only served by email on 20 July 2023 to the email address of Mr Aslam. The Tribunal challenged the competency of the Notice to Leave having regard to the terms of Clause 4 of the PRT relative to communications between the parties thereto and the service of notices. There was originally a tenancy agreement in place with the Respondent and her husband (Mr Aslam's father). On the death of the Respondent's husband, Mr Aslam became the main contact for the Respondent. The PRT was signed by the Respondent electronically using the email address of Mr Aslam. All communications had been with him thereafter using his email address. Around 18 months ago Mr Aslam, on behalf of and with the authority of the Respondent, gave three months' notice that the Respondent would be moving out the Property. That didn't happen. It was not possible to deal directly with the Respondent who speaks no English. Mr Richardson said he was not in his office and would need to search his files for evidence as to how the Notice to Leave was served. The Tribunal observed that the issue of the competency of the Notice to Leave had been raised during the application being sifted. If the Notice to Leave was not competent the application could not proceed further.

- iii. The Applicant said that she found the situation stressful as she has been trying to get the Property back for more than 12 months.

At the CMD Mr Aslam made the following submissions for the Respondent in response to questions from the Tribunal:-

- i. There is no Power of Attorney or Guardianship Order in place for the Respondent.
- ii. Mr Aslam has been pre-occupied with work and the eviction proceedings but will be making those arrangements. The Tribunal stressed the importance of legal authority being in place to make decisions for the Respondent.
- iii. In that Mr Aslam's email dated 14 August 2024 referred to his request to the Tribunal for a period to allow the Respondent to be placed in new accommodation the Tribunal asked what the current position was relative to alternative accommodation. Mr Aslam said he was actively looking for accommodation for the Respondent. He had recently viewed a privately rented property in Polmont. He understands the Applicant wants the Property back. He needs time to find other accommodation as the Respondent has dementia. His father's belongings remain in the Property. He is slowly persuading the Respondent to move. He does not want to be a hinderance to the Applicant and is not playing games. On the Respondent's behalf "Dementia Link" have been assisting by looking at sheltered housing. The Respondent does not want to move to sheltered housing. "Alzheimer Scotland" are helping too. Respondent needs a ground floor property with at least 2 bedrooms. The Respondent lives in the Property alone but occasionally Mrs Aslam and her daughter stay with the Respondent when her health deteriorates. Mr and Mrs Aslam live close by. Mr Aslam did not receive the second Notice to Leave. He was shocked when the eviction application was served. He is aiming to have the Respondent vacate the Property by 1 November 2024. The Tribunal had also noted the contents of Mr Aslam's submissions on behalf of the Respondent including correspondence from NHS Forth Valley and Alzheimer Scotland, setting out her dementia diagnosis, and the "substantial" impact that eviction would have.

The Tribunal adjourned to consider the parties' written and oral submissions.

Reasons for Decision

Clause 4 of the PRT is clear in its terms. Communications including the service of notices are agreed by either (i) "*hard copy by personal delivery or recorded delivery*", or (ii) "*the email addresses set out in clauses [2 or 3] and 1*".

Clause 1 contains the Respondent's details. No email address is narrated there. Communications and service of notices therefore required to take place by hard copy personal delivery or recorded delivery.

There have been no communications directly with the Respondent to vary the terms of Clause 4. Mr Aslam has no legal authority to make decisions for the Respondent being neither her Attorney nor her Guardian.

Service of the Notice to Leave required to be effected in terms of Clause 4. Mr Richardson accepted that the Notice to Leave was served only by email on the email address of Mr Aslam. Whilst he later stated that he would need to search his files for further evidence of how the

Notice to Leave was served the point had been raised with him during the sift of the application and had any other evidence been available to demonstrate service in terms of Clause 4 then it would have been produced at that time. Nothing else was produced.

The Notice to Leave was not served properly in accordance with the PRT. Service by email on Mr Aslam does not constitute competent service of the Notice to Leave. The Notice to Leave is therefore invalid and the application cannot proceed further. The application required to be refused.

If the Applicant wishes to recover possession of the Property a fresh Notice to Leave requires to be properly prepared and served per the PRT. In the event the Applicant then raises further eviction proceedings before the Tribunal these will be determined based on the facts and circumstances of the parties at that time and, in particular, on an assessment of whether it is reasonable or not to issue an eviction order.

Decision

The application for an eviction order relative to the Property is 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.

Gillian Buchanan

Legal Member/Chair

15 August 2024
Date