



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/23/1830

Re: Property at 3B St Mary's Wynd, Stirling, FK8 1BU (“the Property”)

Parties:

Cameron Residential Ltd, 108 Main Street, Larbert, FK5 3AS (“the Applicant”)

Ms Isabel McDonald, 3B St Mary's Wynd, Stirling, FK8 1BU (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Both Parties)

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

1. On 1st June 2023 the Applicant lodged an Application with the Tribunal under Rule 65 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.
2. Lodged with the application were: -
 - a. Short Assured Tenancy Agreement dated 30th August 2004 and initially running from 1st September 2004 to 28th February 2005 and monthly thereafter;
 - b. AT5 Notice dated 30th August 2004;
 - c. Notice to Quit dated 6th March 2023 for 29th May 2023;
 - d. AT6 dated 6th March 2023.
3. The Tribunal wrote to the Applicant on six separate occasions requesting further information and documents. Some of the queries were answered but not

all. On each occasion the Tribunal suggested that the Applicant seek legal advice.

4. On 6th May 2024 the Tribunal accepted the application but sent an email to the Applicant with the following wording:

“Thank you for your recent response. Given the fact you have now provided a notice to quit and explanation for the content of the AT6 the application has now been accepted so that this can proceed to a Case Management Discussion where these matters can be explored in more detail. Issues regarding the notice to quit and AT6 will be considered at the CMD and this acceptance does not mean the notices are accepted as valid just that it is appropriate for this now to proceed to a fuller discussion where you can make submissions to the Tribunal about their validity.”

5. The Application was served on the Respondent by Sheriff Officers on 10th May 2024.

Case Management Discussion

6. The Case Management Discussion (“CMD”) took place by teleconference. Neither party dialled in or was represented. The Clerk telephoned the Applicant to be told that Mr John Rae was away for a few days on business, and that no one at the Applicant’s office had realised that they needed to dial in to the call.
7. The Tribunal took the view that sufficient notice had been given to the parties of the CMD, in terms of Rule 24(1), and that in terms of Rule 29 it could deal with the case in the absence of the parties.
8. The Tribunal dismissed the application, for the reasons given below.

Findings in Fact

- i. The parties entered into a Short Assured Tenancy Agreement in respect of the property;
- ii. The tenancy commenced on 1st September 2004 with the initial term being from 1st September 2004 to 28th February 2005, and monthly thereafter;
- iii. A Notice To Quit, dated 6th March 2023 and giving a termination date of 29th May 2023 was prepared;
- iv. An AT6 dated 6th March 2023 was prepared;
- v. The Application was served on the Respondent by Sheriff Officer on 10th May 2024.

Reasons For Decision

9. The Tribunal were satisfied that neither the Notice to Quit nor the AT6 were valid, and there was no satisfactory evidence that either had been served on the Respondent. The Application therefore had to be refused.
10. A lease must be brought to an end, so that tacit relocation is not operating, before an eviction order can be granted. This is done by serving a Notice to Quit. Section 112 of the Rent (Scotland) Act 1984 says that a Notice to Quit must be in writing, must contain prescribed information and must give the requisite period of notice. In addition, the notice must specify the date on which it is to take effect and that must be an ish date.
11. The Notice to Quit in this case does not bring the tenancy to an end at an ish date.

Paragraph 1 of the Offer to Lease dated 30th August 2004 states:

“The subjects are let on a Short Assured Tenancy within the meaning of section 32 of the Housing (Scotland) Act 1988 for a period from 1st September 2004 to 28th February 2005. The Landlord shall be entitled to terminate the let as at 28th February 2005 by giving not less than two months written notice of intention to terminate as at that date. In the event that the Let is not terminated as at 28th February 2005 by the Landlord giving notice as aforesaid or by the Tenant vacating on that date the Lease shall continue from month to month thereafter subject to either party being entitled to terminate the Let on the final day of March 2005 or on the final day of any month thereafter by not giving less than two months written notice of intention to do so.”

12. It is clear from the contract that if the lease was not brought to an end on 28th February 2005 it was to run from the last day of the month to the last day of the month. The Notice to Quit here gave the termination date as 29th May 2023, which is not an ish date. The Notice to Quit is therefore invalid.
13. If a Landlord wishes to evict a Tenant using any of the Grounds in Schedule 5 of the Housing (Scotland) Act 1988 he must serve a valid AT6. In this case the AT6 is defective in several ways:
 - It does not properly and fully state the Grounds at Part 2

- It does not give any explanation at Part 3 of why possession being sought, the section having been left blank, thereby not giving fair notice to the Respondent of the case against her
- It does not use the correct form of AT6 prescribed by the Rent Regulation and Assured Tenancies (Forms) (Scotland) Regulations 2017, in that Part 4 of the form is part 4 of the Notice to Leave used in evictions for Private Residential Tenancies, as a consequence of which the incorrect date is given for when an application can be made to the Tribunal, and Notes 5,6 and 7 to the Tenant on the prescribed form are omitted.

14. Finally, there is not satisfactory proof of service of either Notice. The Applicant has tendered a photograph of a stamped envelope being deposited in a post box and a photograph of an envelope being posted through a letterbox. There is nothing to identify a valid method of service being used, and it is not clear which photograph relates to which notice.

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.

A Kelly

Legal Member/Chair

17/06/2024

Date