



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/24/2559

Re: Property at 6 Sourlie Terrace, Girdle Toll, Irvine, KA11 1AN (“the Property”)

Parties:

Mrs Shaima Nawar, 2 Goldcraig Court, Girdle Toll, Irvine, KA11 1RD (“the Applicant”)

Ms Jennifer Gillan, 6 Sourlie Terrace, Girdle Toll, Irvine, KA11 1AN (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member) and Janine Green (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for a Private Residential Tenancy Eviction Order be refused.

Background

1. An application was lodged dated 5 June 2024 in terms of Rule 109 of the Chamber Rules for a Private Residential Tenancy Eviction Order.
2. Along with the application form the Applicant lodged the following:
 - A Paper Apart explaining why eviction ground is met
 - A copy Notice to Leave dated 9 May 2024
 - Copy recorded delivery certificate of posting dated 9 May 202
 - Copy invoice dated 14/09/23 re electrical repairs
 - Copy Electrical installation condition report dated 13/09/23
 - Copy Gas certificate dated 24/08/23
 - Recorded delivery certificate of posting dated 23/05/24
 - Copy letter dated 23 May 2024
 - Copy letter dated 27 September 2023
 - Copy letter dated 30 April 2024
 - Copy recorded delivery certificate of posting dated 1 May 2024

- Copy letter dated 5 September 2023
 - Copy Notice to Quit dated 14 December 2023
 - Copy tenancy agreement
3. The Tribunal contacted the applicant's representative on 6 June 2024 requesting the following information:
 - A copy of the notice given to the local authority as required under section 56(1) of the 2016 Act
 - Evidence of the notice given to the local authority as required under section 56(1) of the 2016 Act
 4. The Applicant's representative replied on 8 June 2024 with a copy of the relevant notice and evidence of it having been given to the local authority.
 5. The case was accepted and scheduled for a case management discussion on 4 October 2024.
 6. The Respondent was served notice of the application and details of the case management discussion. The Respondent was advised that she was required to lodge written representations by 16 September 2024.
 7. The Respondent's representative emailed the Tribunal on 18 September 2024 confirming his authority to act and with written representations for the Respondent.
 8. The Applicant's representative responded to the Respondent's written representations by email dated 29 September 2024 with a copy of numerous further messages between the parties and photographs of the Property.

The Case Management Discussion

9. The case management discussion took place today by teleconference. Mr Najim attended on behalf of the Applicant and Mr Meek of CHAP attended on behalf of the Respondent.
10. As a preliminary issue, the Tribunal asked to hear parties' positions in relation to the Notice to Leave. At part 4 of the Notice to Leave the date given as being the earliest date for Tribunal Proceedings to start was 1 June 2024 when it should have been 9 June 2024. The correct date had originally been on the Notice to Leave but this had been scored out and replaced with the date of 1 June 2024. The Applicant's representative confirmed the Notice to Leave had been drafted by solicitors but the change to the date had been made and signed by the Applicant. This was a copy of the Notice to Leave served on the Respondent by recorded delivery on 9 May 2024. The Tribunal application had been dated 5 June 2024 and submitted to the Tribunal on the same date. The Applicant's representative could provide no reason for changing the date apart from he was under the impression that the tenancy agreement only lasted a year and had been renewed on 1 June each year since the Respondent started residing at the Property on the 1 June 2020. The Respondent's representative

advised that he had not had sight of the Notice to Leave in the papers received from the Respondent but his position was that the Notice to Leave was not a valid Notice to Leave.

Findings in Fact

11. The Tribunal made the following findings in fact:

- Parties had entered into a Private Residential Tenancy Agreement commencing on 1 June 2020.
- The Applicant had served a Notice to Leave on the tenant by Recorded Delivery on 9 May 2024.
- The Notice to leave was not a Valid Notice to Leave in terms of the 2016 Act.

Reasons for Decision

12. The Tribunal took into account the written evidence and submissions before it along with the oral submissions from the parties' representatives at the case management discussion today.

13. The Tribunal considered the relevant provisions of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). In particular the Tribunal took account of section 62 of the 2016 Act which provides:

"62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent."

14. The Tribunal also required to consider, in particular, section 54 of the 2016 Act which provides:

“54 Restriction on applying during the notice period

(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.”

15. In respect that the relevant eviction ground stated in the Notice to Leave was that the tenant had failed to comply with obligations under the tenancy and in respect that the Notice to Leave had been served by recorded delivery mail on 9 May 2024 the correct date for part 4 of the Notice to Leave as being the earliest date on which Tribunal Proceedings could start should have been 9 June 2024 all in terms of sections 54 and 62 of the 2016 Act. The date that was in fact stated on the Notice to Leave was 1 June 2024.

Decision

16. In respect that the Notice to Leave relied upon in this application is not a valid Notice to Leave in terms of the 2016 Act, the application for a Private Residential Tenancy Eviction Order 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.

Anne Mathie

Legal Member/Chair

— 4th October 2024
Date