Housing and Property Chamber
First-tier Tribunal for Scotland

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/19/0794

Re: Property at Lodge Cottage, Craigbeck, Moffat, DG10 9QP ("the Property")

Parties:

Mrs Annie Elvin Meehan, C/O Hillmount Cottage, Birgham, Coldstream, TD12 4NE ("the Applicant")

Mr Jason Allen, Mrs Sarah Allen, UNKNOWN, UNKNOWN ("the Respondent")

Tribunal Members:

Alison Kelly (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application for recall should not be granted and that the eviction order granted on 6th June 2019 should stand.

The application by the applicant for expenses of the recall procedure is refused.

Background

On 6th June 2019 a decision was issued by the Tribunal granting eviction of the Respondents from the property. The Application had been lodged under Rule 66, seeking eviciton on the basis that the Short Assured Tenancy had been brought to an end by sevice of a Notice To Quit and a section 33 Notice.

Service of the application failed, and service was allowed by way of advertisment on the Tribunal's website.

There was no appearance by the Respondents or any representative on their behalf at the Case Management Discussion on 6th June 2019, and being satisifed that the notices had been served the Tribunal granted the order.

On 20th June 2019 the Tribunal received an email from Alan Innes of Burness Paull, Solicitors, on behalf of the Respondents, seeking that the order be recalled. In his email he stated that it was in the interests of justice to recall the order. He submitted that the Respondents were unaware of the Tribunal proceedings against them, they did not receive notification of proceedings by post or by sheriff officer. They had no reason to contemplate that proceedngs had been raised against them and they had no reason to consult the Tribunal's website. He said that the Applicant's agents were aware of the Respondents' email address.

He further submitted that the Respondents were unaware that the Applicant had attempted to serve a Notice To Quit on them, with the intention of terminating the tenancy. He said that the Respondents did not reside in the property and the Applicant was aware of that.

He said that the application for recall had been made as soon as reasonably practicable after the Respondents became aware of the decision against them. (It should be noted that the application was submitted timeously in terms of the Tribunal's Rules of Procedure).

He said that had the Respondents been aware of the proceedings they would have opposed the application. He said that they had substantive defences to the orders sought against them for the above and further reasons. He said that they may have causes of action against the Respondents.

He submitted that it was in the interests of justice for the Tribunal to consider the Respondents' defences prior to deciding whether to grant any orders against the Respondents. He submitted that the Applicant would not be unfairly prejudiced by the recall.

The Applicant's solicitor lodged a Statement of Objection on 24th June 2019.

The Chairperson was asked to consider the application for recall.

In terms of Rule 30 (9) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 the First-tier Tribunal, after considering the application to recall any statement of objection, may grant the application and recall the decision, refuse the application, or order the parties to appear at a Case Managment Discussion where the First-tier Tribunal will consider whether to recall the decision.

Given that the application for recall alluded to substantive defences for the above and further reasons, the Chairperson decided to fix a Case Management Discussion to explore the further reasons.

The Chairperson issed a Direction to the Respondents requiring a full Note of Defence including the reasons included in, and the further reasons allued to, in Alan Innes's email of 20th June 2019, to be lodged by close of business on 14th August 2019.

On 14th August 2019 the Applicants lodged a substntial Inventory of Productions.

On 14th August 2019 the Respondents' solicitor emailed the Tribunal asking for a postponement of the Case Management Discussion and an extension of time for lodging the Note of Defence. He said that the Respondents, due to family and work commitments, had been unable to prepare full defences and collate evidence in support of those defences.

The Chairperson refused the application for a postponement and extension.

On the afternoon of 21st August 2019, the day before this Case Management Discussion, the Tribunal received an email from the Respondents' solicitor stating that he had withdrawn from acting on their behalf.

Case Management Discussion

The Applicant was represented by Kirsten Brown of McJerrow and Stevenson, Solicitors. Mrs Allen, Respondent, was present and confirmed that she was repreenting both herself and her husband. She explained that her solicitor could not continue to act until Hiscox Insurance had confirmed that they would provide funding. She did not seek a postponement of the Case Manamgement Discussion.

The Chairperson asked everyone to introduce themselves, and then explained the procedure, and what the Case Management Discussion was about. She confirmed that as far as she was concerned the case for eviction and the case for rent arrears were two separate matters, and would be dealt with seperately.

The Chairperson noted that the Respondents had given keys to the property to the Applicant's agent in August 2018 to allow access to an electrician. She asked the Respondent how many sets of keys had been posted. The Respondent confirmed that one set had been posted, they only had one set as her own set had been lost.

The Chairperson asked about a forwarding address after the Respondents had left, and whether and when this address had been conveyed to the Applicant's agent. The Respondent said that they had always known her business address, and it could have been obtained from Companies House if they were unsure. She said that she was of the view that serice of the notices had not been effected by sheriff officer as they were not in occupation of the property.

The Chairperson asked if the Respondent had a copy of the Applicant's Inventory of Productions. She said that she had not been able to download it from the documents sent to her by her solicitor. The Chairperson drew her attention to an email from her solicitor to the Applicant's solicitor dated 25th July, which stated that the Respondents did not wish to return to the property. The Respondent advised that this was not the case. The electrical certificate that they had been seeking was included in the Inventory of Productions produced by the Applicant's solicitor, and on the basis that this work had been done, they would now want to live in the property. She and her husband had invested substantial sums of money in setting up a business in the area, which they stood to lose if they could not live in the area. Thety had moved out for the work on the electrics to be carried out, and a safety certificate

to be produced, and they had not then been allowed to move back in. They had not been advised that the safety certificate had been produced. They had lodged four applications with the First-tier Tribunal in relation to repairs, but none of those applications, for various reasons, had been accepted by the Tribunal.

The Chairperson asked Miss Brown to confirm the Applicant's position regarding the tenancy continuing. She said that the Applicant did not wish to have the Respondents as tenants of the property, and if the order was recalled fresh notices would be served.

The Chairperson explained to the Respondent that the appliciation had been raised under Rule 66, and that as long as notices had been served correctly and the tenancy thereby brought to an end, the Tribunal had no discretion, and granting the order for eviciton was mandatory. She explained that there was no defence to it. She explained whatever had taken place during the course of the tenancy did not amount to a reason to refuse the application, but might be the subject of a different type of procedure. She explained that if she did decide to recall the order, the Applicant's solicitor would merely serve fresh notices to bring the tenancy to an end, make a fresh application to the Tribunal, and as long as the notices had been served the order would be granted. The Respondent said that she still wished to move for the recall.

The Chairperson decided to consider the position and issue a written decision in due course.

The Applicant's solicitor sought the expenses of the recall procedure. She explianed that the applicant was a 92 year old lady and that the process had caused her a lot of distress, and that she considered the Respondents to be vexatious litigants. The position being presented to the Tribunal today was different from the position being presented in the request for recall.

The Respondent was upset at the description of her as vexatious. She said that they had been treated badly, had lost a lot of mone, and had the defend the action.

Reasons For Decision

The application is one under Rule 66, seeking eviction in terms of section 33 of the Housing (Scotland) Act 1988. As long as the procedures have been complied with the Tribunal must grant the application.

The Chairperson considered the point regarding whether or not the Notice To Quit and Section 33 notice had been served by Sheriff Officers on 21st December 2018. The Cerificate of Execution of Service concludes that the Sheriff Officer was satisfied that service had been effected. The Chairperson was therefor satisfied that the Notices had been correctly served. There is therefor no defence to the action and it would not be in the interests of justice to recall the order.

Rule 40 of the Tribunal's rules state that the Tribunal may award expenses against a party but only where that party through unresonable behaviour in the conduct of a case has put the other party to unnessecary or unreasonable expense.

The rule does not mention anything about stress or inconvenience, only unnecssary or unreasonable expense. The Respondents took legal advice, and until the day before the Case Management Discussion were represented by a solicitor. The Chairperson considered that it would be a stretch to say that their behaviour in lodging a Minute for Recall after taking legal advice was unreasonable.

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. J. Kelly

22/8/19

Legal Member/Chair **Date**