



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/21/0926

Re: Property at Lovehall Farm Cottage, Lovehall Road, Angus, DD5 3QF (“the Property”)

Parties:

Mr John Hair, Mrs Karen Hair, Smithfield Farm, Monikie, Dundee, DD5 3QD (“the Applicant”)

Mr Alexander John Knight, Mrs Rosette Knight, Lovehall Farm Cottage, Lovehall Road, Angus, DD5 3QF (“the Respondent”)

Tribunal Members:

John McHugh (Legal Member) and Mike Scott (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should not be made.

Background

The Applicant is the landlord and the Respondent the tenant in terms of a private residential tenancy in respect of the Property dated 28 August 2019. The Applicant has made an application to the Tribunal for eviction of the Respondent on the grounds that the Property is required for occupation by a family member.

The Hearing

A hearing took place by telephone conference on 30 August 2021. The Applicant was represented by Fiona Wakem of Wardhaugh Property, the Applicant’s letting agent. The Respondent was represented by Linda Bulle of Shelter Scotland.

A detailed written submission had been prepared by the Respondent’s representative in advance of the hearing. This set out that the date in the Notice to

Leave was incorrect and accordingly the application was invalid. Ms Bulle confirmed that this was the sole argument relied upon by the Respondent to resist the application.

We raised this argument with Ms Wakem. She accepts what is said about the incorrect date in the Notice to Leave but argues that in terms of section 73 of the 2016 Act the error does not materially affect the effect of the Notice. This is so because she advises that the Respondent had been made aware of the intention to evict by telephone prior to 13 January 2021 (and in other conversations after that date).

Findings in Fact

The Applicant is the landlord and the Respondent the tenant in terms of a private residential tenancy in respect of the Property dated 28 August 2019.

On 13 January 2021 the Applicant served a Notice to Leave upon the Respondent by email.

The Notice to Leave specified the earliest date upon which the Applicant expected to be able to raise eviction proceedings as 14 April 2021.

The Notice relied upon the eviction Ground contained in the 2016 Act Sch 3, Part 1, paragraph 5 (that a family member of the Applicant intends to live in the Property).

The present Application was made to the Tribunal on 16 April 2021.

Reasons for Decision

Section 62 of the 2016 Act sets out the requirements of a valid Notice to Leave. These include that it “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” (section 62(1)(b)).

Section 62(4) specifies that the date to be included for the purposes of section 62(1)(b) is: “the day falling after the day on which the notice period specified in section 54(2) will expire.”

The period applicable to this application in terms of section 54(2) is three months.

Section 62(5) of the 2016 Act creates a presumption that a Notice will be received 48 hours after it was sent.

The date specified by the Applicant in the Notice in this case was 14 April 2021.

It is agreed that the Notice to Leave was emailed to the Respondent on 13 January 2021.

Because of the terms of section 62(5) in this case the Notice is presumed to have been received on 15 January 2021 and the three month notice period runs from then. Because of the terms of section 62(4) the date to be completed in the Notice to Leave is the following day (ie the calculation is two days plus three months plus one day).

14 April 2021 was therefore the wrong date.

The effect of this error is that the Notice served in this case is not a valid Notice to Leave in terms of the requirements of section 62.

Section 52(3) requires that an application for eviction “must be accompanied by a copy of the notice to leave which has been given to the tenant.”

Section 52(2) specifies that “The Tribunal is not to entertain an application for an eviction order if it is made in breach of subsection (3)”

In the circumstances, the Tribunal considers that it may not entertain the application.

The only potential saving grace for the Applicant would be via section 73 which provides that “An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.”

While it may be true that the Respondent had been informed of the Applicant’s intention to make an application for an eviction order since 13 January 2021 and possibly earlier, we do not consider that that allows us to apply section 73 to excuse the erroneous date in the Notice to Leave. That is because the date is one of the essential requirements of a notice to leave in terms of section 62(1) and so the error did materially affect the effect of the Notice to Leave.

That is the case even though the Tribunal recognises that the error was small, understandable given the complexity of the legislation and that its effect probably caused minimal prejudice to the Respondents.

The Applicant is, of course, free to bring a fresh application for eviction if it chooses. The Applicant’s representative advised at the hearing that the Respondent had fallen into rent arrears. Nothing in this decision excuses the Respondent from its obligations to pay rent and the Applicant remains free to bring proceedings in respect of any rent arrears in addition to any eviction proceedings.

Decision

The application for an 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.

John McHugh. Legal Member/Chair

30 August 2021
Date