



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 52 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/19/1108

Re: Property at 218 Uppercraighour, Edinburgh, EH17 7SH (“the Property”)

Parties:

Dr Farrukh Iqbal, 15 Carnbee End, Liberton, Edinburgh (“the Applicant”)

Ms Kira Burns, 218 Uppercraighour, Edinburgh, EH17 7SH (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member)

Decision (in absence of the Respondent)

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

- Background

The Applicant submitted an application to the Tribunal dated 9 April 2019 seeking an Eviction Order under Rule 109 (the Application). A Case Management Discussion (CMD) took place on 17 June 2019. The Applicant was present and was represented by a Mr Ahmed (a non-practising barrister). Despite intimation of the Application on the Respondent she was not present nor had she lodged any written response to the Application.

- The Case Management Discussion

Mr Ahmed moved the Application. The Tribunal sought to clarify a number of issues relating to the Application and more specifically the Notice To Leave (NTL). Mr Ahmed confirmed that, although the NTL was dated 8 March 2019, it was not sent to the Respondent until 9 March 2019. Service had been made by email, by hand delivery as well as sending by normal (unregistered post). Clause 3 of the lease between the parties contained consent by the Respondent to electronic communication.

The NTL contained 2 suggested grounds for possession. The first was Ground 11 and the second was ground 12, both of Schedule 3 and Private Housing (Tenancies) (Scotland) Act 2016 (the Act).

The Applicant had also sought to add additional text to the NTL that did not amount to a Ground for possession under schedule 3 of the Act. This was inappropriate and was disregarded.

In relation to Ground 11 whilst it was accepted that there was no detail of how this ground arose within the NTL or the Application itself, Mr Ahmed indicated that it was due to a failure by the Respondent to allow the Applicant to access the Property for the purpose of repairs. He confirmed no details of this had been lodged with the Tribunal and indicated that the primary case he relied upon was Ground 12. In short, he stated that the Respondent had paid no rent since January 2019 and that Ground 12 had therefore been made out. No reason had been given to the Applicant for the non-payment.

The terms of the NTL and on particular part 4 were then discussed. The NTL is dated 8 March 2019, but Mr Ahmed conceded that it had not been sent until 9 March 2019. The date that was stated as being the earliest date that the Applicant would apply for an Eviction Order was stated as being 6 April 2019. After considering the terms of section 62(4) and (5) Mr Ahmed conceded that, whether the NTL had been served on 8 or 9 March 2019, this period was too short and did not meet the requirements of the Act. He sought to rely upon a letter sent on 7 April 2019 which allowed the Respondent more time to vacate to remediate this failure.

- Findings in Fact and Law

- 1) That the Applicant and the Respondent entered into a Private Residential Tenancy on 7 December 2018.
- 2) That as a result of rent arrears the Applicant sent a Notice to Leave to the Respondent on 9 March 2019.
- 3) That in terms of clause 3 of the lease dated 7 December 2018 the Respondent consented to electronic intimation of notices.
- 4) That the requirements of section 62(4) and (5) were not complied with.
- 5) That the Respondent has therefore not received the required period of notice.
- 6) The Applicant was not entitled to an Eviction Order.

- Reasons for Decision

Whilst there were other issues with the terms of the NTL and in particular whether there had been proper intimation of anything which could constitute Ground 11 of the Act, it was clear and accepted that the Applicant had failed to give the required notice to the Respondent under the Act.

Whilst the NTL was dated 8 March 2019 it was not sent until 9 March 2019. The Applicant stated that he had sent the NTL by email on that date as well as by unregistered post and separately hand delivered a copy as well. The lease between the parties contains a provision that intimation of notices will be made by email.

In terms of section 54 of the Act, the notice period applicable in these circumstances is 28 days. However, section 62(5) of the Act states that any NTL will be assumed to have been received 48 hours after it is sent. In this case, even if we were to assume email intimation on the date of the NTL (which is not in fact the case) the NTL would have been received on 10 March 2019. The 28 day notice period would run from and including that date (section 53(2)(a) of the Act) and the date that is to be inserted in Part 4 of the NTL is "the day" after the expiry of the notice period meaning (assuming the NTL was sent on 8 March 2019) 7 April 2019. The NTL in this case was stated as expiring on 6 April 2019, which is one day short. The position is worse if the NTL was sent on 9 March 2019, which was the accepted position.

The Tribunal was also of the view that the Applicant's letter of 7 April 2019 could not assist with this failure.

That being the case, irrespective of the arrears position, the Tribunal could not grant an Eviction Order and refused the Application.

- Decision

The Application was 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.

Rory Cowan

Legal Member/Chair

Date 17 June 2019