



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 'the Rules'.

In respect of application by Mrs Sharon Cuthbert of Puffin Properties on behalf of Miss Laila Shah in terms of Rule 109 of the Rules.

Case reference FTS/HPC/EV/19/2820

At Glasgow on the 11 November 2019, Lesley Anne Ward, legal member of the First –Tier Tribunal 'the Tribunal' with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1)(a) and (c) of the Rules.

1. This is an application on behalf of Miss Laila Shah , the owner and landlord of the property at 17 Calderview Motherwell ML1 1EQ 'the property', for recovery of possession of the property in terms of Rule 109 of the rules.
2. The application was made on the applicant's behalf by Mrs Sharon Cuthbert of Puffin Properties on 10 September 2019.
3. The application was accompanied by the following:-
 1. Model Private Residential Tenancy agreement for let of the property from 27 September 2018.
 2. Notice to leave dated 5 August 2019.
 3. S11 notice.

4. The tribunal wrote to the applicant's representative on 1 October 2019 asking for the following:

Please provide the email said to have been sent to the tenant with the notice to leave.

5. The applicant's representative responded on 2 October 2019 with a copy of an email trail sent to the tenant. The notice to leave was sent by email to the tenant on 5 August 2019.
6. The application is seeking to recover the property on ground 12 on the basis of rent arrears over three consecutive months. The notice to leave also refers to ground 11, breach of the tenancy agreement. There is no rent schedule attached to the notice to leave. It gives a reason for the eviction at part 3 of the notice to leave as "Tenant has made no effort to pay any rent in over 5 months".
7. There is a fundamental problem with this application which relates to the notice to leave. I have considered the notice to leave carefully and considered whether the notice to quit meets the legal requirements of such a notice. I consider that the notice to leave issued here is invalid. Section 54 of the Private Housing (Tenancies)(Scotland) Act 2016, 'the Act' 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.

(4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

8. In terms of s54 of the Act, 28 days' notice is required to be given to a tenant where the grounds for recovery of possession are either ground 11 or 12. The notice to leave here is dated 5 August 2019 and states that an application will not be submitted to the tribunal until 2 September 2019. Even if the notice to leave was received by the respondent on 5 August 2019 that is only 27 days notice.
9. Further, s62(1) of the Act 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.

10. S 62(b) requires that the notice to leave should specify the day on which the landlord expects to become entitled to make an application to the tribunal and s62(4) provides that the 'day' specified is the day falling after the day on which the notice period defined in s54(2) will expire. S 62(5) of the Act states that for the purposes of subsection (4) it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent. What this all means in this context is that the notice to leave should have given the date of 5 September 2019 and not the 2 August 2019.
11. There is a further problem with the notice to leave. In part 3 where details and evidence of the eviction grounds are required the only entry is, as narrated above, "Tenant has made no effort to pay any rent over 5 months". There is no rent calculation attached with details of the rent arrears and when they accrued.
12. I have considered whether these two issues mean that the notice to leave is invalid and whether the errors are minor errors which can be rectified by s73 of the Act which provides:

73 Minor errors in documents

- (1) 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.
- (2) This section applies to—
 - (a) a notice under section 14(3), 16(3)(c), 22(1) or 61(1),
 - (b) the document by which a referral is made to a rent officer under section 24(1),
 - (c) the document by which an application is made to a rent officer under section 42(1), and
 - (d) a notice to leave (as defined by section 62(1)).

13. I consider that the errors here are fundamental rather than a minor. The tenant has not been given the minimum statutory notice of 28 days as required by s54 of the Act. There are no details of the rent arrears to enable the tenant or the tribunal to be satisfied that the ground 12 is met.
14. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if "***they consider that an application is vexatious or frivolous***".
15. "Frivolous" in the context of legal proceedings is defined by Lord Justice Bingham in R-v- North West Suffolk (Mildenhall Magistrates Court (1998) Env.L.R.9. At page 16 he states:- "What the expression means in this context is, in my view, that the court considers the application to be futile , misconceived, hopeless or academic".

16. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application. There is a fundamental defect with the notice to leave. The application would have no reasonable prospects of success.

NOTE: What you should do now.

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this decision of the Chamber President or any legal member acting under delegated powers 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

Lesley Anne Ward

Legal Member