



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 5(1) of the Private Housing  
(Tenancies) Act 2016**

**Chamber Ref: FTS/HPC/EV/19/2858**

**Re: Property at 31 McNaughton Drive, Kilmarnock, KA3 7NF (“the Property”)**

**Parties:**

**Mrs Margaret Allan, 16 Strawberrybank Road, Kilmarnock, KA3 7RT (“the Applicant”)**

**Mr Ryan Storrie, 31 McNaughton Drive, Kilmarnock, KA3 7NF (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to dismiss the application**

**Background**

1. By application received on 11<sup>th</sup> September 2019 the applicant sought an order for eviction.
2. The application was heard jointly with an application seeking an order for payment (FTS/HPC/CV/19/2860).
3. A rent statement, copy lease, copy notice to the local authority and copy notice to leave had been lodged with the application.
4. A case management discussion (“cmd”) was held on 15<sup>th</sup> November 2019. The respondent failed to attend that cmd and contacted the tribunal beforehand to advise that he was unwell. The tribunal adjourned the case to a

second cmd on 9<sup>th</sup> December 2019 and issued a Direction requiring the respondent to lodge evidence of his ill health prior to the previous cmd.

5. The respondent failed to lodge any documents as requested in terms of the Direction issued by the tribunal.
6. The respondent did not attend the cmd on 9<sup>th</sup> December 2019. The applicant was represented at the cmd by Carol Dickie of Ardanach Lettings Ltd.
7. The tribunal was satisfied that the respondent had been given proper notice in terms of rule 24(1) and proceeded with the cmd in his absence in terms of rule 29.

### **The Case Management Discussion**

8. The tribunal noted that the tenancy agreement which had been lodged with the application specified that there were joint tenants named as the respondent and Fawn McGill.
9. The applicant's representative confirmed that there had been a joint tenant called Fawn McGill. She advised that the respondent had told her that Fawn McGill had moved out of the property around the time that the notice to leave was served in April 2019.
10. The applicant's representative advised that neither a notice to leave nor the present application had been served on the joint tenant. The applicant's representative had found Ms McGill via a Facebook page and attempted to email her however she had no formal intimation of the present eviction proceedings.
11. The applicant's representative had understood that Mr Storrie was the "head tenant" and that it had been agreed that all correspondence should be sent to him.
12. The applicant's representative advised that the tenancy was currently unoccupied however; she stated that Mr Storrie did seem to return there regularly to pick up his mail and had recently caused some disturbance by spending an evening at the property.
13. The tribunal noted that the applicant sought to recover possession on the basis of grounds 11 and 12 in the Private Housing (Tenancies) Scotland Act 2016.
14. Ground 11 states:

11(1) *It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.*

15. Ground 12 states:

12(1) *It is an eviction ground if the tenant has been in rent arrears for three or more consecutive months.*

The ground is mandatory if on the date of the tribunal considering the matter the tenant has arrears in excess of one month's rent and has been in rent arrears for three consecutive months.

16. The Notice served on the respondent specified that grounds 11 and 12 were being relied on as the respondent was 15 days late in paying April's rent. There is also reference to a history of late rent payments in April 2018. The applicant's representative accepted that ground 12 had not been applicable as at the date of service of the notice in April 2019. She advised that she had been following guidance issued to landlords by a landlord association. The tribunal advised that in terms of the legislation the ground of eviction had to be satisfied at the date that the notice to leave was served. If it was not satisfied then the applicant could not proceed on the basis of that ground. (*Manjid v Gaffney* UTS/AP/19/0037). The tribunal did note that the landlord's agent had acted in good faith and on the basis of advice she had received.

17. The tribunal noted a further issue with the notice to leave. In terms of section 54 of the Act as the respondent had resided in the tenancy for longer than six months the applicant required to give 84 days' notice in the notice to leave. In addition in terms of section 62 there is an assumption that the tenant will receive the notice 48 hours after it is posted. Section 62 also requires that the date specified in the notice to leave should be the day falling after the notice period expires. The notice lodged with the application is dated 15<sup>th</sup> April 2019. The date specified in the notice should have been 11<sup>th</sup> July 2019 (84+2+1 days) The notice lodged specified the 10<sup>th</sup> July 2019 which is one day short of the statutory notice period. Accordingly the notice was defective.

### **Findings in Fact**

18. The applicant entered into a Private Residential Tenancy with the respondent and a joint tenant Fawn McGill. The tenancy commenced on 1<sup>st</sup> October 2018.

19. On 15<sup>th</sup> April 2019 the applicant served a notice to leave on the respondent advising that an application would not be submitted to the tribunal before 10<sup>th</sup> July 2019.
20. The applicant did not serve a notice to leave on the joint tenant, Fawn McGill.
21. The date specified in the notice to leave is one day less than the notice required in terms of sections 52 and 62 of the Act.
22. Ground 12 was not satisfied as at the date the notice was served.
23. Ground 11 was satisfied as at the date the notice was served.
24. The present application was not served on the joint tenant, Fawn McGill
25. Fawn McGill's interest in the tenancy had not been terminated prior to the present application being lodged with the tribunal.

### **Reasons for the Decision**

26. The tribunal determined that both the notice to leave and the application should have been served on the joint tenant Fawn McGill whose interest in the tenancy had not been terminated. The tribunal accepted that the applicant's representative had acted in good faith in her belief that correspondence only required to be intimated to a "head tenant", however, the legislation was clear that all joint tenants were treated equally (ss1 and 2).
27. The tribunal determined that even if the applicant had been entitled to proceed against the respondent alone, the notice to leave was invalid as it did not provide the statutory minimum notice period as discussed above. As the notice was invalid the tribunal could not grant an order as sought in the present proceedings,
28. The tribunal determined that the notice was incompetent in so far as it sought to give notice that the applicant could proceed on the basis of ground 12. Ground 12 was not satisfied at the point the notice was served, The applicant's representative confirmed that there had been a delay in payment of one month's rent at the time the notice was served, however given the respondent's previous patterns of payment she had expected him to begin building up significant arrears. On that basis, even if there had been no other issues with the application the tribunal could not competently grant an order on the basis of ground 12.

## Decision

29. For the foregoing reasons the tribunal determined to dismiss the application as an order for eviction could not competently be granted

## 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.

Mary -Claire Kelly  
Legal Member/Chair

9<sup>th</sup> December 2019  
Date