



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) Act 2016 (“the Act”)

Chamber Ref: FTS/HPC/EV/19/3808

Re: Property at 109 Oakridge Crescent, Paisley, PA3 1RT (“the Property”)

Parties:

Mr Bashayer Almukhaizeem, 8 Sparrow Way, Burgess Hill, RH15 9UL (“the Applicant”) per his agents, Lind Letting Ltd, 1 Kirkinner Place, Main Street, Bridge of Weir, PA11 3AA (“the Applicant’s Agents”)

Mrs Carrie Ann Robertson, 109 Oakridge Crescent, Paisley, PA3 1RT (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that no Order be granted

1. By application dated 25 November 2019 comprising application form, copy Private Residential Tenancy between the Parties, copy Notice to Leave dated 4 September 2019 with an effective date of 26 November 2019 and citing Ground 11 (breach of tenancy) and Ground 12 (rent arrears over three consecutive months) (“the Notice to Leave”), copy statement of rent due and owing and copy notice in terms of the Homelessness etc (Scotland) Act 2003 (“the Application”) the Applicant’s Agents on behalf of the Applicant applied for a possession order in terms of Section 51 of the Act. A legal member of the Tribunal with delegated powers to do so, accepted the Application in terms of Rule 9 of the Rules and a Case Management Discussion (“CMD”) was fixed for 20 February 2020 at the Glasgow Tribunal Centre, 20 York Street, Glasgow, G2 8GT. The CMD was intimated to the Parties.

CMD

2. The CMD took place on 20 February 2020 at the said Glasgow Tribunal Centre. The Applicant was not present and was represented by Ms. Sidebotham of the Applicant's Agents. The Respondent was present and not represented. The Tribunal explained the purpose and procedures of the Tribunal.
3. The Tribunal referred Ms. Sidebotham to the copy Notice to Leave and raised a preliminary issue in respect of its competence with reference to the Act. The Notice to Leave is prescribed by Section 62 of the Act which states that a notice to leave is a notice which, *inter alia*, "*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*". The day on which the landlord expects to become entitled to make an application to the Tribunal is defined by Section 54(2) of the Act which states that "*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....or (ii)84 days after it begins*". In terms of Section 62(5) of the Act, the deemed date of receipt is 48 hours after the date of the notice to leave. Section 62(4) of the Act states that the day to be specified in the notice of leave as the day on which the landlord expects to become entitled to make an application for an eviction order is the day falling after the day on which the notice period defined in Section 54(2) will expire.
4. The Tribunal noted that, in this case, the Notice to Leave is dated 4 September 2019. In terms of Section 62(5) of the Act, the deemed date of receipt is 6 September 2019. Therefore, the notice period of the Notice to Leave is either 5 October 2019 or 30 November 2019 and the date on which the Applicant can apply to the tribunal is either 6 October 2019 or 1 December 2019. The Notice to Leave specifies the day on which the landlord expects to become entitled to make an application for an eviction order as 26 November 2019, which clearly does not comply with the Act.
5. The Tribunal referred Ms. Sidebotham to the grounds specified in the Notice to Leave. Ms Sidebotham explained that the Ground 11 breach of tenancy is failure to pay rent and that in respect of Ground 12 rent is in arrears of more than seven consecutive months. The Tribunal explained that Ground 11 expressly excludes rent arrears and to the rent statement which shows one month rents arrears at the date of the Notice to Leave.
6. The Tribunal adjourned to allow Ms. Sidebotham to contact her office to enquire if another notice to leave had been given. Following the adjournment, Ms Sidebotham advised the Tribunal that no other notice to leave had been given in respect of the Application. She explained that Ground 11 related to entry to the Property not being made available as required by the Private Residential Tenancy between the Parties but accepted that this alleged breach had not been made clear in the Notice of Leave.
7. Accordingly, the Tribunal advised the Parties that it found that the Notice to Leave is not a competent notice to leave in terms of the Act and so the Application cannot proceed.

Decision and Reasons for Decision

8. Having determined that the Notice to Leave is not valid in terms of the Act, the Tribunal then had regard to its powers in terms of the Act. Section 52 (2) of the Act states *“The Tribunal is not to entertain an application for an eviction order if it is made in breach of (a) subsection (3)”* which subsection states *“An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.”* Having determined that no notice to leave accompanied the Application and that no notice to leave has been given to the Respondents, the Tribunal determined that it has no power to entertain the Application and so did not grant an Order.

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.

K. M

Legal Member/Chair

20 February 2020

Date