



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/21/3017

Property : 67 Castle Court, 44 Broomburn Drive, Glasgow G77 5JH ("Property")

Parties:

Sophia Rafique, Flat 1, 8 Fordham Close, London EN4 9AJ ("Applicant")

Mrs Lai Ki Soon and Mr Fuk Tuk Soon, 67 Castle Court, 44 Broomburn Drive, Glasgow G77 5JH ("Respondent")

Legal Services Agency Ltd, 3rd Floor, Fleming House, Glasgow G3 6ST ("First Respondent's Representative")

Tribunal Members:

**Joan Devine (Legal Member)
Elizabeth Currie (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined not to make an order for possession of the Property and dismissed the Application.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E dated 6 December 2021. The documents produced were: 5 pages of a Private Residential Tenancy Agreement dated 30 January 2021; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 2 September 2021 ("Notice to Leave"); copy email from the Applicant to the Respondents dated 2 September 2021 in which she stated she wished to move back into the Property; copy email dated 20 October 2021 from the Applicant to the Respondents attaching Notice to Leave; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 3 December 2021; confirmation of assignment regarding a job as financial controller at Morgan Stanley, Glasgow; copy text messages between the Applicant and Liam Fordham Close and sheriff officer's execution of service certifying service of the

Application on 18 January 2021. A Direction dated 14 December 2021 had been issued in terms of which the Parties were required to provide a written representation as to why the Tribunal should deem it reasonable to allow the application to proceed although the notice period of 3 months, running from the date when the notice to Leave was served, had not expired. A written representation was received from the Applicant on 17 February 2022 attaching a copy of an email to the Respondents and a further notice to leave both dated 21 October 2021. A written representation was also received from the First Respondent's Representative.

Case Management Discussion

A case management discussion took place before the Tribunal on 23 February 2022 by teleconference. Both the Applicant and the Respondents were in attendance as was Claire Cochrane of the First Respondent's Representative.

The Tribunal noted that the Notice to Leave was dated 2 September 2021. The ground relied upon was ground 4, landlord intends to live in the property, which required 3 months' notice. At part 4 of the Notice to Leave it stated that an application for an eviction order would not be submitted before 2 December 2021. The Notice to Leave had been served on the Respondents by email dated 20 October 2021.

The Tribunal asked the Applicant about her approach to completion of the paperwork. She said that she had sent an email to the Respondents on 2 September 2021 explaining her need to move back into the Property. She said that after that she read up on the requirements to obtain an order for eviction and realised she needed to serve a formal pack of information. She completed the Notice to Leave on 20 October 2021 but thought she could back date it to 2 September 2021 as she had sent an email to the Respondents that day explaining her position. She said that she took advice from the Citizens Advice Bureau.

The Tribunal noted that a second notice to leave had been sent to the Respondents on 21 October 2021. Ms Cochrane confirmed with the First Respondent that this had been received. The Applicant said that she served this as she wanted to make sure she was doing the right thing. She said she was not a legal person and had not done this before.

The Tribunal noted the written representation received on behalf of the First Respondent. Ms Cochrane submitted that the discretionary power in section 52(4) of the Act only applied where a landlord had applied for an eviction order during the notice period. She said that in this case the Notice to Leave was not valid therefore section 52(4) did not apply. She noted that the Applicant was aware of the 3 month notice period but had backdated the Notice to Leave.

The Tribunal asked Ms Cochrane if it was open to the Tribunal to consider the second notice to leave now produced and dated 21 October 2021. She submitted that it was not as the Application had to be accompanied by a valid notice to leave. In this case it was not. She submitted that if the Applicant wished to rely on the second notice to leave, a fresh application would be required.

The Applicant said that she was not familiar with all of the technicalities of seeking a possession order. She said that she was stranded in London away from her children. she said that her work contract may not be renewed if she could not move back to Glasgow. She asked the Tribunal to consider the families involved.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondents had entered into a Private Residential Tenancy Agreement which commenced on 30 January 2021 ("Tenancy Agreement").
2. The Notice to Leave produced with the Application was dated 2 September 2021. It stated that an application for an eviction order would not be submitted to the Tribunal before 2 December 2021.
3. In terms of the Tenancy Agreement, the parties had agreed that communications could be by email.
4. The Notice to Leave was issued by email on 20 October 2021.
5. The Applicant did not state the correct relevant period in part 4 of the Notice to Leave as required by the Act as amended.

Reasons for the Decision

The Tribunal considered section 54(2) of the Act which provides that the relevant period in a notice to leave begins on the day the tenant receives the notice to leave from the landlord. In this case that date was 20 October 2021. In those circumstances the relevant period expired on 20 January 2021. The first date on which an application could be made for an order for eviction was therefore 21 January 2022, not 2 December 2021 as stated in the Notice to Leave.

The Tribunal considered the Coronavirus (Scotland) Act 2020 schedule 1 which extended the notice periods under the Act and in particular to paragraph 10 which provides that where a notice is completed without taking account of the extended notice periods, the notice is not invalid but cannot be relied upon until the date it could have been relied upon if properly completed.

The Tribunal determined that the Applicant was not entitled to rely upon the Notice to Leave until 21 January 2022. In those circumstances the present Application, having been made on 6 December 2021, was premature and should be refused.

The Tribunal determined that this was not a case where it was open to the Tribunal to exercise its discretion in terms of section 52(4) of the Act. This is not an application made during the notice period but one where the incorrect date was stated in part 4 of the Notice to Leave which meant that the Respondents were effectively given less notice that required by the Act as amended by the Coronavirus (Scotland) Act 2020.

The Tribunal determined that it could not have regard to the second notice to leave produced on 17 February 2022 as it did not accompany the application for an eviction order as required by section 52(3) of the Act.

In all of the circumstances the Tribunal determined not to make an order for possession of the Property in terms of Section 51 of the Act.

Decision

The Tribunal dismissed the Application.

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.

**Joan Devine
Legal Member**

Date : 23 February 2022

