



Decision 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/22/2564

Re: Property at Flat 1L, 101 Nelson St, Largs, N Ayrshire, KA30 9JF (“the Property”)

Parties:

Mrs Helen Mary Birtill, 11 Sycamore Close, Long Crendon, Aylesbury, Bucks, HP18 9BN (“the Applicant”)

Mr Peter McClymont, Flat 1L, 101 Nelson St, Largs, N Ayrshire, KA30 9JF (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. An application was submitted dated 26 July 2022 in terms of Rule 109 of the Chamber Rules for a Private Residential Tenancy Eviction Order in terms of section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. Along with the application form, the Applicant lodged the following documents:
 - Copy tenancy agreement
 - Copy Notice to Leave
 - Proof of Posting in January 2022
2. The Tribunal emailed the Applicant on 29 June 2022 to advise that only two of the three emails mentioned had been received and asking for clarification of the Applicant’s email address.
3. The Applicant duly responded.

4. The Tribunal wrote to the Applicant again on 30 August 2022 seeking proof of service of the Notice to Leave, noting the Property is jointly owned with the Applicant's daughter, Katriona Birtill, and asking for confirmation as to whether she was to be added to the Application as an Applicant or for her written authority and asking for evidence in support of the eviction ground such as terms of engagement with a Solicitor or Estate Agent to sell the Property.
5. The Applicant responded by email dated 31 August 2022 confirming that her daughter would send in a letter of authority. She also advised that she hadn't yet instructed selling agents for the Property as she didn't know when it would be vacated and she was unable to get access to view the Property.
6. The Applicant also provided proof of delivery of the Notice to Leave.
7. The Applicant's daughter sent a letter of authority to the Tribunal dated 31 August 2022 confirming her mother had authority to act on her behalf in respect of the application.
8. The application was accepted and assigned to a case management discussion. Intimation of the application and the case management discussion were served on the Respondent by Sheriff Officers on 1 December 2022. The Respondent was advised that he was required to submit any written representations in response to the application by 19 December 2022.
9. In the notification letters to the respondent he was advised:
"The tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order. If you do not take part in the case management discussion, this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair."
10. No written representations have been received by the Respondent.

The Case Management Discussion

11. The case management discussion took place today by teleconference. The Applicant attended and there was no attendance by, or on behalf of the Respondent. The Applicant advised that she had originally purchased the Property as a holiday home for herself and her husband but it had turned out to be unsuitable for this purpose due to her husband's medical condition. They had, accordingly purchased, a ground floor property nearby. The Applicant advised that the Respondent was in agreement that he should be evicted as he had mobility issues and she didn't know how he managed the stairs.

12. The Applicant's chronology of events was non sequential and deficient in key areas. On being asked about the service of documents on the Respondent in relation to vacating the Property, she originally advised the Tribunal that she had served a Notice to Quit in both January 2021 and September 2021 before being advised that she should have served a Notice to Leave. She had attempted to serve a Notice to Leave by posting it recorded delivery on 25 January 2022 but, when questioned by the Tribunal as to why the proof of delivery lodged was dated 29 March 2022, she advised that the letter had been returned to her at the beginning of April 2022 so she had had to reserve the Notice to Leave. This did not tie in with the proof of delivery lodged being dated 29 March 2022. The Applicant accepted that she must have resent the letter in March 2022 but had no proof of postage beyond the proof of postage which had already been lodged dated 25 January 2022 (and it seems this referred to the Notice to Leave which was returned undelivered).
13. The Applicant also accepted that she had only sent one Notice to Quit in September 2021. She had no proof of postage and no proof of receipt in respect of the invalid Notice to Quit but had discussed the Notice to Quit on the phone with the Respondent.

Findings in Fact

14. The following findings in fact were made:

- The Parties entered a private residential tenancy agreement on 1 October 2020 in respect of the Property;
- The only proof of service available in respect of any Notice to leave or Notice to Quit is dated 29 March 2022.

Reasons for Decision

15. At the time of service of the relevant Notice to Leave on 29 March 2022 the required notice in respect of ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") was six months, as provided for in section 54 of the 2016 Act, as amended. The application was lodged dated 26 July 2022 by covering email dated 26 July 2022 with service of the Notice to Leave only having taken place on 29 March 2022. Accordingly, less than four months notice had been given to the Respondent prior to lodging the application for repossession. While section 52(4) allows the Tribunal to entertain an application made before the expiry of the relevant notice period where it considers it reasonable to do so, the Tribunal did not consider it reasonable to do so in these circumstances. The application was lodged less than four months after notice had been served on the Respondent. The Applicant's submission was that the Respondent would have been aware of her intention to seek an eviction order when she served the invalid Notice to Quit in September 2021 but had no evidence of service of the invalid Notice to Quit.

Decision

16. The Tribunal refused the application for a repossession order in respect of the Property.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Anne Mathie

13 January 2022

Legal Member/Chair

Date

Anne Mathie