



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/19/3005

Re: Property at 5 Morningside Grove, Aberdeen, AB10 7DJ (“the Property”)

Parties:

Miss Constance Selbie, Mr Stephen Selbie, Mrs Fiona Selbie, 306 Queens Road, Aberdeen, AB15 8DT (“the Applicant”)

Miss Nicole Underhill, 5 Morningside Grove, Aberdeen, AB10 7DJ (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant had failed to serve the Notice to Leave in a valid manner and therefore the Applicant’s application is dismissed

Background

The Applicant is the owner of the Property and had let the Property to the Respondent. The Applicant alleged that the Respondent had failed to make payment of the rent due under the lease. The Applicant had served a Notice to Leave on the Respondent but alleged that she had failed to remove upon expiry. Accordingly the Applicant had applied to the Tribunal seeking an order for possession of the Property.

The Tribunal had before it the following documentation to consider:-

- The Applicant’s application to the Tribunal dated 23 September 2019;
- A copy of a tenancy agreement granted by the Applicant to the Respondent dated 21 June 2019;

- Notice to Leave dated 12 August 2019 and copy email sending this to the Respondent;
- S11 Homelessness Notice to the relevant local authority;
- A copy of the Applicant's Land Certificate showing title to the Property;
- Sheriff Officers confirmation of intimation of service of the Tribunal papers on the Respondent dated 31 October 2019.

Case Management Discussion

The Tribunal held a CMD at the Credo Centre, John Street, Aberdeen at 2pm on 28 November 2019. Mr Stephen Selbie and Mrs Fiona Selbie were present from the Applicant. The Respondent was present and represented herself.

Findings in Fact

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property;
- The Applicant had granted a private residential tenancy ("PRT") of the Property to the Respondent with effect from 1 May 2019, although the prescribed form PRT had not been used;
- The Respondent had failed to make the rental payments due under the lease on 1 June, July, August and September 2019;
- A Notice to Leave was served via email only on 12 August 2019;
- The PRT style used by the Applicant did not allow for service via email;
- In terms of s26 of the Interpretation and Legislative Reform (Scotland) Act 2019 both parties must agree in writing for service to be available via electronic communication;
- The Notice to Leave was not served in a valid manner;

Reasons for Decision

The Tribunal noted that the Applicant had not issued the PRT in the model form prescribed by legislation. The lease that was granted was defective in numerous regards, was signed weeks after the date of entry and contained erroneous references to legislation and put obligations upon the Respondent that were not legal. It did not contain a proper notices clause and, in particular, did not contain the provisions of the model form relating to service via email. No email addresses could be inserted as required by the model tenancy. There was no evidence that an alternative means of service other than email had taken place.

Additionally the Tribunal noted the terms of s26 of the Interpretation and Legislative Reform (Scotland) Act 2010. Whilst allowing service via email subsection 3 requires the parties to have agreed this between them in writing in advance. As noted above, this had not occurred. Accordingly, service had not been effected validly and the application was without legal foundation and was dismissed.

The Tribunal was not without sympathy for the Applicant as the ground for eviction had been substantiated. Had service been validly effected the Tribunal would not

have hesitated to grant the order. However, the paperwork used by the Applicant fell well short of the legislation and the standard required. The Applicant would be well advised to acquaint themselves better with the legislation governing private residential tenancies. In any event, the Respondent indicated she had removed from the Property some time ago. She needed to get some possessions and the parties were going to liaise to organise this. The parties agreed that once this was done the tenancy would be at an end regardless.

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.

E Miller

Legal Member/Chair

28/11/19

Date