



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/18/1058

Re: Property at 17 Cameron March, Edinburgh, EH16 5XG (“the Property”)

Parties:

Royal College of Surgeons, Nicolson Street, Edinburgh, EH8 9DW (“the Applicant”)

Ms Kirstie Murray, 17 Cameron March, Edinburgh, EH16 5XG (“the Respondent”)

Tribunal Members:

Anne Mathie (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the application dated 30 April 2018 by the applicant, made in terms of Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

- **Background**
This is an application in terms of Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The applicant is seeking an order for recovery of possession of the property in terms of s18 of the Housing (Scotland) Act 1988 (“the Act”). The original application stated that it was made in terms of Rule 66 but no notice to quit or s33 notice were provided. The Tribunal had requested sight of these but had been advised by applicants representative via email dated 15 May 2018 that they submitted that neither a notice to quit nor s33 notice would be required in the circumstances and referred to section 18 of the Housing (Scotland) Act 1988.

Documents lodged with the Tribunal were the Tenancy Agreement, the Tenant Information Pack, s11 notice, AT6, AT5, certificate of execution of service of the AT6, a copy of the Housing (Scotland) Act 1988 and a rent statement.

The Tribunal fixed a Case Management Discussion and this was intimated to parties. The respondent was served with papers by Sheriff Officers on 30th May 2018 confirming the details of the case and the date of the Case Management Discussion. The Respondent was advised she was required to attend the Case Management Discussion today and was informed that the Tribunal could make a decision on the application today if the Tribunal had sufficient information and considers the procedure to be fair. The respondent was advised that written representations in response to the application required to be lodged by 18 June 2018. No responses have been received.

- **The Hearing/Case Management Discussion**
The case management discussion took place in the absence of the respondent today. Scott Runciman, Solicitor, was in attendance representing the applicant. The Tribunal requested clarification of which Rule the case proceeded under. An oral motion was made by the applicants representative to amend the application to one under Rule 65. This was a new procedure and the Rule 66 box had been checked in error. The Tribunal went through the documents before it. In particular the Tribunal requested submissions in relation to Part 3 of the AT6 which merely repeated verbatim the Grounds narrated in Part 2 of the AT6. The Tribunal understood the purpose of Part 3 of the AT6 was to provide the tenant with sufficient details of the circumstances that the Landlord relies upon in asserting that a ground has been made out. Mr Runciman submitted that the action was undefended, the tenant was in the process of moving out and would be well aware of what rent she was due to pay in terms of the tenancy agreement. She would have also received further information when the application was served on her. He also drew attention to the fact that ground 8 was mandatory and all the other requirements had been met. The Tribunal advised that eviction cases were of the utmost gravity and it was imperative that the rules be complied with in relation to the relevant forms. There was a lack of specification at part 3 of the AT6 which could amount to a fatal flaw and the Tribunal had to consider dismissal of the application. After a brief adjournment at the instance of the Tribunal Mr Runciman made further submissions that there was sufficient specification at Part 3 and requested a continuation rather than dismissal. The Tribunal refused this motion.
- **Findings in Fact**
The lease between the parties is a Short Assured Tenancy from 4 April 2017 to 4 April 2018. A notice in terms of Section 19 of the Act was served on the respondent. Said notice was fundamentally flawed due to lack of specification at Part 3.
- **Reasons for Decision**
The Tribunal was not satisfied that the requirements of Section 19(2) of the Act had been met to allow an order to be made, namely that the lack of

specification at Part 3 of the AT6 rendered the notice non-compliant with Section 19(2) of the Act

- Decision
The Tribunal dismissed the action for recovery of possession

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.

A Mathie

Legal Member/Chair

22 June 2018
Date