



**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/18/1085

Re: Property at 10A Drumlanrig Square, Hawick, TD9 0AS (“the Property”)

Parties:

Mr Lewis Collings, 2 Coniston Square, Great Yarmouth, NR30 1NT (“the Applicant”)

Mr Daniel Lenton, 10A Drumlanrig Square, Hawick, TD9 0AS (“the Respondent”)

Tribunal Members:

Lesley Johnston (Legal Member)

Decision (in the absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application for possession.

Introduction

This is an Application by Lewis Collings as Landlord of the property at 10A Drumlanrig Square, Hawick, TD9 0AS for possession under section 18 of the Housing (Scotland) Act (‘the 1988 Act’). The Respondent is Daniel Lenton. He is the tenant at the property.

The application is made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (‘the rules’), rule 65. The application was lodged on 3 May 2018.

Notice of the Case Management Discussion was served on the Respondent on 6 July 2018 by Sheriff Officers.

Case Management Discussion

The application called before the Tribunal on 3 August 2018 for a Case Management Discussion.

The Applicant was represented at the Case Management Discussion by Mr Ricket, Solicitor of Andrew Haddon & Crowe WS.

The Respondent was not present. The Tribunal was satisfied that notice of the hearing was given by Sheriff Officers on 6 July 2018. The Tribunal exercised its discretion to allow the hearing to proceed in the absence of the Respondent in terms of rule 29.

The application is made in respect of a tenancy agreement between the Applicant and Respondent dated 31 October 2016. The duration of the tenancy is stated in the lease as 31 October 2016 until 29 April 2017, continuing on a monthly basis thereafter.

In terms of clause 6 of the lease, rent is due in the sum of £350 per calendar month payable monthly in advance.

The lease set out the grounds upon which possession could be sought by the Landlord. That included possession on the basis of ground 8 of schedule 5 of the Act.

The Applicant sent an AT6 by recorded delivery post on 12 April 2018 giving notice of his intention to raise proceedings on the basis of Schedule 5, ground 8. However, the proof of delivery slip showed that the AT6 was returned to the Applicant's agents as "not called for".

The Applicant lodged the application with the Tribunal on 3 May 2018.

At the Case Management Discussion, the Tribunal enquired as to whether Mr Ricket had sought to serve the AT6 by any other means following the return of the Recorded Delivery post. He advised that he had not. Mr Ricket had the unopened, returned envelope with him at the hearing.

He submitted that notwithstanding that the notice had been returned to his office unopened by reason of not being called for, it could still constitute valid service for two reasons:

1. The Respondent would have received the slip to advise that he had recorded delivery mail to collect from the post office. Mr Ricket conceded that the Respondent would not have known that it contained an AT6; and

2. In any event, the Tribunal had issued the Application and the enclosures (containing the AT6) to the Respondent on 6 July when it gave notice of today's hearing. Therefore, the Respondent had received the AT6.

Mr Ricket moved for the application to be granted in the absence of any representations from the Respondent.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and Respondent entered into a tenancy agreement on 31 October 2016 until 29 April 2017 continuing on a monthly basis thereafter;
2. That the lease was in respect of 10A Drumlanrig Square, Hawick, TD9 0AS;
3. The rent under the lease was £350 per calendar month;
4. The Applicant issued an AT6 to the Respondent by Recorded Delivery post on 12 April 2018. The Recorded Delivery service failed by reason "not called for";
5. The AT6 notice was returned in an unopened envelope to the Applicant's solicitor on 4 May 2018 and signed by for Mr Ricket;
6. The Applicant did not serve the AT6 by any other means

Decision

The Applicant seeks an Order for possession on the basis of section 18 of the Housing (Scotland) Act 1988, on the basis of schedule 5, ground 8.

Ground 8 is as follows:

"Both at the date of the service of the notice under section 19 of the Act relating to the proceedings for possession and at the date of the hearing, at least three months rent lawfully due from the tenant is in arrears."

Ground 8 being a mandatory ground, the Tribunal must grant the Order if it is established.

However, an Order for possession is subject to section 19 of the 1988 Act.

In terms of section 19, the Tribunal may not entertain proceedings for possession of a house let on an assured tenancy unless the landlord "has served" on the tenant a notice in accordance with section 19 (an AT6 Notice) (see section 19(1a)). Where the Applicant seeks an order on the basis of ground 8, the Tribunal has no discretion to dispense with the requirement of the Notice (section 19(5)).

A Notice may be served by delivering it to the person; by leaving it at his last known address or by sending it by recorded delivery letter to him at that address (section 54 of the 1988 Act).

Service of the AT6

Since the Applicant seeks an Order for Possession on ground 8 of Schedule 5, the Applicant must have served the Notice in terms of section 19 of the Act. This Tribunal has no discretion to allow the application to proceed in the absence of such a Notice.

The Notice was sent by the Applicant's agent to the Respondent by Recorded Delivery post on 12 April. However, it was returned to the Applicant's representative on 4 May 2018. The Royal Mail Proof of Delivery slip was provided by the Applicant to the Tribunal. It shows that the AT6 was "delivered back to sender from our Hawick Delivery Office before 08:41 on 4 May 2018" and was signed for by Mr Ricket.

At sifting of the Application, the Tribunal's administration asked the Applicant for proof of re-service of the Notice. The Applicant's representative replied to advise "*I sent you the Certificate of Posting for the AT6. That is valid service according to Section 54 of the Housing (Scotland) Act 1988 whether or not the letter is actually called for.*"

The Tribunal has decided to refuse the application. The Tribunal is not satisfied that the AT6 has been served on the tenant.

The purpose of an AT6 Notice, particularly in the circumstances where an order for possession is sought under ground 8, is to ensure that the tenant is made aware of the Landlord's intention to bring the tenancy to an end owing to the Tenant's breach of tenancy.

To establish ground 8, the Landlord must show that there was at least three months of rent arrears at the date of service of the notice and at the date of the hearing. The Tenant is therefore afforded an opportunity to clear the rent arrears prior to the date of the hearing with the effect that the Landlord will have been unable to satisfy ground 8.

The Landlord's agent is aware that the AT6 notice has not been served on the Tenant. The solicitor has signed to accept the returned notice. The notice is still contained within an unopened envelope. No alternative method of service was arranged.

The Tribunal does not consider that section 54(c) is satisfied simply by sending the Notice Recorded Delivery without any regard as to whether delivery was successful. As a matter of fact, the Respondent has not received the recorded delivery letter at his address. It is still in the hands of the Applicant's representative.

Separately, the Tribunal does not consider that an AT6 has been served simply by it being issued to the Respondent as an enclosure to the application in advance of the hearing. The purpose of the AT6 is to give advance notice to the Respondent of the Applicant's intention to raise proceedings. That purpose is undermined if proceedings have already been raised by the time the Respondent receives the notice.

In these circumstances, the Tribunal is not satisfied that the Landlord "has served" the AT6. In accordance with section 19, the Tribunal shall not therefore entertain proceedings for possession.

The Tribunal refuses 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.

Lesley Johnston

Legal Member/Chair

3/8/18

Date