

Housing and Property Chamber
First-tier Tribunal for Scotland



Notes on a Case Management Discussion of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 109 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for an eviction order under section 51(1) of the Private Housing (Tenancies) Scotland Act 2016 in terms of rule Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/18/1657

Re: 21 Annan Road, Kilmarnock, KA1 3NE ("the Property")

Parties:

Adrian Deeley c/o Lyn- Mar, 20 West George Street, Kilmarnock, KA1 1DG ("the Applicant")

Mrs Amanda Archer, 21 Annan Road, Kilmarnock, KA1 3NE ("the Respondent")

Tribunal Member: Jacqui Taylor (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") dismissed the Application.

1. Background

1.1 The Applicant submitted an application to the Tribunal for grant of an eviction order under section 51(1) of the Private Housing (Tenancies) Scotland Act 2016, which application was dated 3rd July 2018.

1.2 The Applicant is Landlord of the Property and the Respondent is Tenant of the Property in terms of the lease between the parties dated 18th January 2018.

1.3 The lease is a Private Residential Tenancy in terms of the Private Housing (Tenancies)(Scotland) Act 2016.

1.4 The Landlord's title to the Property is registered in the Land Register of Scotland under Title Number AYR52317.

1.5 The Landlord sent the Tenant a Notice to Leave dated 29th May 2018. The Notice was served on the Tenant by email on 29th May 2018. The Notice to Leave required the Tenant to vacate the Property and explained that an application would be submitted to the Tribunal for an eviction order before 28th June 2018. The Notice did not state a date that the Tenant should leave by and it did not state a date before which an application would not be submitted to the Tribunal.

At Part 4 of the Notice it stated:

'An application will be submitted to the Tribunal for an eviction before 28/06/18.'

2. Documents lodged with the Tribunal.

2.1 Documents lodged with the Tribunal by the Applicant were:

- A copy of the Private Residential Tenancy Agreement.
- A copy of the Notice to leave.
- A copy of the Section 11 Notice to East Ayrshire Council which stated that the Landlord has issued a Notice of Intention to Raise Proceedings to recover possession of a dwelling let on a Short Assured Tenancy.

2.2 Documents lodged with the Tribunal by the Respondent were:

- Written representations which stated, inter alia, that she received the Notice to Quit on 29th May 2018.

3. Case Management Discussion.

3.1 The Tribunal fixed a Case Management Discussion and this was intimated to the parties. The Respondent was served with notice of the Case Management Discussion by Sheriff Officers on 16th July 2018.

3.2 The Case Management Discussion took place in respect of the application on 9th August 2018 at Ayr Town Hall, New Bridge Street, Ayr.

3.3 The Applicant was present at the Case Management Discussion together with Andrea McLean, of Lyn-Mar, The Letting Agent. The Respondent was present along with Stewart McClintock of Riccarton Community Council. He was providing support to the Respondent.

3.4 The Tribunal determined:-

(First) that the Notice to Leave was incompetent for two reasons:

- (i) No leave date was inserted in the Notice and
- (ii) The Notice did not state that an application would not be submitted to the Tribunal for an eviction order before a specified date. The Notice stated: 'An application will be submitted to the Tribunal for an eviction before 28/06/18'.

(Second) The Section 11 Notice to East Ayrshire Council had been incorrectly completed as the form stated that the Landlord had issued a Notice of Intention to Raise Proceedings to recover possession of a dwelling house let on a short assured tenancy.

Consequently 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.

Legal Member/Chair

9th August 2018
Date