

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/0020

Re: Property at 44 Maberly Street, Aberdeen, AB25 1NB (“the Property”)

Parties:

KA and JD Macpherson, 13 Ardbeck Place, Peterculter, AB14 0ST (“the Applicant”)

Miss Nicole Shaw, whose present address is unknown, (“the Respondent”)

Tribunal Member:

Valerie Bremner (Legal Member)

Summary of Discussion

This Application called for a Case Management Discussion on 20th May 2019 along with Applications HPC/CV/19/0021 and HPC/EV/19/0782.

The Applicant Kenneth MacPherson was present at the Case Management Discussion and represented both Applicants.

In respect of this Application and HPC/CV/19/0021 service of the applications on the Respondent had been effected by way of advertisement on the Housing and Property Chamber website, in terms of Rule 6A of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Amendment Regulations 2018, the Tribunal having accepted the advertisement request. The Tribunal had certificates of Service by advertisement and was satisfied that the Application could be deemed to be served on the Respondent.

The Respondent did not attend the case management discussion and the Applicant Mr Macpherson indicated that he was seeking to proceed in her absence.

The Tribunal was prepared to proceed in the absence of the Respondent in terms of Rule 29 of the Tribunal Procedure Rules.

The Tribunal had sight of the Application, a tenancy agreement, a Notice to Leave, a letter from the Applicant to the Respondent, e mails, including an email from the Applicant to the Respondent dated 26 November 2018 intimating the Notice to Leave and papers said to list noise complaints at the property. The Tribunal also had sight of a notice in terms of the Homelessness etc (Scotland) Act 2003 which the Applicant said had been sent to Aberdeen City Council.

The Applicant and Respondent had entered into a tenancy agreement for a private residential tenancy the property with effect from 27 September 2018. The Applicant indicated that because of complaints from neighbours about noise and disturbance at the property that he had no option but to give the Respondent Notice to Leave.

The Notice to Leave was considered by the Tribunal. This document was dated 26 November 2018 and gave the eviction ground as relevant anti-social behaviour and described " noise complaints " at the property. The relevant Period of Notice to be given in this application in terms of Section 54 of the 2016 Act is 28 days.

Part 4 of the Notice to Leave indicated that the earliest date Tribunal proceedings could start was 25th December 2018.

The Applicant had no evidence to put before the Tribunal as to when his email sending the Notice to Leave was received by the Respondent as she had not acknowledged it at any time. In this situation section 62(5) of the 2016 Act applies.

Section 62 of the 2016 Act indicates as follows :-

62. Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

From this it seems clear that the date in Part 4 of the Notice to Leave being the earliest date when an Applicant can apply to the Tribunal for eviction proceedings must take account of both the terms of Sections 62(4) and also 62(5).

In this Application since there is no evidence as to when the Notice to Leave was received by the Respondent then S62(5) applies and in this Application it is assumed that the Notice to Leave had been received on 28th November 2018. The Notice period required of 28 days as set out in S54 of the Act would then run until 25th December 2018. The earliest date on which the Applicant could apply to the Tribunal in terms of S62(4) would then be 26th December 2018 and not 25th December 2018 as stated within the Application.

The Tribunal considered the terms of s52 of the Act and whether this permitted a breach of s 62 to be permitted by the Tribunal if this was deemed reasonable. The Tribunal was of the view that the legislation permitted no such discretion in respect of a breach of the required terms of a Notice to Leave and as such the Notice to Leave was defective.

These issues were set out by the Tribunal for the Applicant who requested that the Tribunal rule on the matter.

Findings in Fact

The Applicant and Respondent entered into a tenancy agreement for the property with effect from 27th September 2018.

Due to complaints from neighbours the Applicant decided that he required to seek an Eviction Order against the Respondent and emailed her a Notice to Leave on 26th November 2018.

The Respondent is assumed to have received that Notice to Leave on 28th November 2018 in terms of Section 62(5) of the 2016 Act.

The Notice period for the Notice to Leave expired on 25th December 2018.

The earliest date when Tribunal Proceedings could commence is 26th December 2018 in terms of S62(1)(b) of the Act.

The Notice to Leave has an incorrect date for the date required to be specified in S62(4) of the 2016 Act.

Reasons for Decision

The Tribunal considered that the Notice to Leave served by the Applicant on the Respondent was defective in that it breached the terms of Section 62 of the Private Housing(Tenancies) (Scotland) Act 2016.

Decision

The Application for an eviction order was dismissed as the Notice to Leave served on the Respondent did not comply with the requirements of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

V Bremner

Legal Member

20 May 2019

Date