



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/19/0799

Re: Property at 91 Willowbank Road, Aberdeen, AB11 6XD (“the Property”)

Parties:

Mr Frank Watt, 6 Edgehill Gardens, Potterton, Aberdeenshire, AB23 8ZE (“the Applicant”)

Mrs Helen Stuart Cooke, 91 Willowbank Road, Aberdeen, AB11 6XD (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that in terms of s55 of the Private Housing (Tenancies) (Scotland) Act 2016, the application to the Tribunal had not been made within the requisite six month period following expiry of the Notice to Leave. On that basis the Tribunal did not have jurisdiction and the action was dismissed.

Background

The Applicant is the owner of the Property. He has rented the Property to the Respondent by virtue of a lease dated 17 February 2018. The Applicant alleges that the Respondent has a number of issues and has been behaving in an anti-social manner. Accordingly the Applicant had served a Notice to Leave on the Respondent. The Respondent had not removed the Applicant had then made an application to the Tribunal to have the Respondent evicted and an order for possession granted in favour of the Applicant.

Case Management Discussion (CMD)

A CMD took place at 2pm on 30 May 2019 at the Credo Centre, John Street, Aberdeen. The Applicant was not present but was represented by Ms McHardy of Walter Gerrard & Company, Solicitors, Macduff, who joined by conference call. The

Respondent was not present but was represented by Ms Kettlewell of Civil Legal Assistance Office, Solicitors, Aberdeen.

Ms Kettlewell raised a preliminary point of jurisdiction in relation to the timing of the application to the Tribunal following upon the expiry of the period referred to in the Notice to Leave

Findings in Fact

The Tribunal found the following facts to be established:-

- The Applicant is the owner of the Property;
- The Applicant had let the Property to the Respondent by way of a private rented tenancy granted under the Private Housing (Tenancies)(Scotland) Act 2016 ("the Act") commencing on 17 February 2018;
- On 6 July 2018 the Applicant validly served a Notice to Leave on the Respondent;
- The Respondent was required to remove from the Property in terms of the Notice to Leave by 7 August 2018. The Respondent failed to so remove;
- The Applicant then made an application to the Tribunal in terms of s51 of the Act seeking possession of the Property;
- The application to the Tribunal was dated 25 October 2018 but was not submitted to the Tribunal until on or around 9 March 2019.

Findings in Fact & Law

- The application to the Tribunal was made more than 6 months after the date of the expiry of the period specified in the Notice to Leave and therefore, in terms of s55 of the Act the Tribunal did not have jurisdiction as the application was not competently made and was, effectively, time barred.

Reasons for Decision

The Respondent's representative raised a preliminary point of jurisdiction with the Tribunal and sought for the application to be dismissed on the grounds the Tribunal did not have jurisdiction to hear the case.

She highlighted the terms of s52(2) which specifies that the Tribunal cannot entertain an application for eviction if it is made in breach of ss54-56 of the Act.

S55 of the Act is a restriction on applying to the Tribunal for an eviction order against a tenant using a copy of a notice to leave more than 6 months after the day on which the relevant period in relation to that notice expired.

In this particular case the Notice to Leave was dated 6 July 2018. The Notice specified that an application to the Tribunal for an eviction would not be submitted before 7 August 2018. It was not disputed by the Respondents representative that the correct timescales had been specified in the Notice to Leave. However, the point made by the Respondent's representative was that after expiry of the Notice to Leave on 7 August 2018, the Applicant had a period of six months only in terms of

s55 of the Act to apply to the Tribunal for an eviction order. The application to the Tribunal was not submitted until around 9 March 2019, being around 7 months after the expiry of the date specified in the Notice to Leave. It was therefore not competent to apply to the Tribunal

The Applicant's representative highlighted that the application had been signed in October 2018. However, the Tribunal was of the view that the relevant date for assessing the six month period was not the day it was signed by the Applicant but the date it was sent to the Tribunal. The application was date stamped 11 March 2019 by the Tribunal and so it was an entirely reasonable supposition that it had only been sent a couple of days before that.

The Applicant's representative explained that the submission of the application form had been held back as they had sent the relevant s11 Homelessness Notice to the relevant local authority and were awaiting some form of acknowledgement or action from the local authority (nothing was forthcoming from the local authority). Whilst the Tribunal had some sympathy for the position of the Applicant and his representative, the simple matter was that the Tribunal simply required to know that the s11 notice had been sent. No acknowledgement or action from the local authority was required to be made with the application to the Tribunal.

The Applicant's representative highlighted that were the application to be dismissed it was only delaying matters temporarily. The Applicant would simply apply again and we would be back in the same position in a few months' time. The Respondents representative accepted this but sought dismissal and offered that discussions between the parties in the meantime may help resolve matters. The Applicant's representative requested the Tribunal exercise any discretion it had in the matter.

The Tribunal considered matters. The terms of s55 were clear. Once the period set out in the Notice to Leave expires a landlord has a six month window of opportunity to apply for an eviction order if a tenant has failed to remove. Once that period has expired the Notice to Leave effectively becomes redundant and a landlord needs to start the process over again. It would be unreasonable for a tenant to be left hanging forever wondering if a landlord was going to take matters to a tribunal or not and a six month period seems reasonable and is entrenched in s55 of the Act. The wording of s55 gives no discretion to the Tribunal. The section specifies that a landlord may not make an application to the Tribunal once the relevant period has expired.

Accordingly, whilst the Tribunal had some sympathy for the Applicant's position, the Tribunal's hands were tied. The legal position was clear. The Notice to Leave had expired and a valid application to the Tribunal could only have been made up until around 8 February. The Tribunal had no option but to dismiss the action as the terms of s55 had not been met and the Tribunal had no jurisdiction.

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

30/5/19

Legal Member/Chair

Date