



Statement of decision (incorporating reasons) of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber Ref: FTS/HPC/EV/18/2446

Re: 38 Jerviston Court, Motherwell, ML1 4BS (“the Property”)

Parties:

Mr Ajay Ahuja, U1, South Fens Business Centre, Fenton Way, Chatteris, PE16 6TT (“the Applicant”)

Miss Holly Peck and Mr Aaron McHugh, 38 Jerviston Court, Motherwell, ML1 4BS (“the Respondents”)

Tribunal Member:

Pamela Woodman (Legal Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

1. A case management discussion in relation to case reference FTS/HPC/EV/18/2446 took place at 10.00am on Thursday 29 November 2018 in room 112, Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT (“**the CMD**”). The Applicant was not present in person but was represented by Richard Matthews (“**the Applicant’s Representative**”) of RJM Property Services Ltd. The Respondents were not present nor were they represented at the CMD.
2. The Applicant made an application to the Tribunal under section 51(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“**2017 Regulations**”). More specifically, the application was made in terms of rule 109 (*Application for an eviction order in relation to a private residential tenancy*) of the HPC Rules.
3. The order sought from the Tribunal was an eviction order in respect of the Property.

4. Following the CMD, the “Notes on a Case Management Discussion (including Direction)” dated 29 November 2018 (“CMD Notes”) were issued to the Applicant/Applicant’s Representative and the Respondents.
5. The direction, as set out in the CMD Notes, was in the following terms:

“In terms of Rule 16, the Tribunal (on its own initiative) directs the Applicant, on or before (but no later than) Friday 14 December 2018, to submit to the Tribunal:

 - a. Evidence of service of the Notice to Leave on each of the two Respondents;
 - b. A copy of the tenancy creation form (referred to during the CMD) duly signed by each of the Respondents;
 - c. A copy of the section 11 notice given to the local authority in the “manner and form prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003” as is required in terms of section 56(2) of the Private Housing (Tenancies) (Scotland) Act 2016 (and so having reference to The Notice to Local Authorities (Scotland) Regulations 2008, as amended by The Notice to Local Authorities (Scotland) Amendment Regulations 2017), together with evidence of service; and
 - d. To the extent available, copy e-mail correspondence with the appropriate authority in relation to there being no “live claim” by the Respondents for housing benefit, universal credit or any other relevant benefit.”
6. An e-mail dated 21 February 2019 from Hayley Robinson, stated to be from Ahuja Holdings, was received by the Tribunal. As noted in the CMD Notes, the Applicant was a director and majority shareholder of AMPG Limited (according to Companies House online), of which “Ahuja Holdings” was stated to be a trading name. The said e-mail stated that it attached “documentation which is required with regard to the conduct of the above case”. Without considering the substance of the attached documentation, the Legal Member noted that the provision of documentation was over two months late.
7. Accordingly, the Applicant did not comply with the direction “on or before (but no later than) Friday 14 December 2018”. That failure to comply with the direction by the required deadline was, of itself, sufficient to reject the application with case reference FTS/HPC/EV/18/2446. This is one distinct reason for the rejection.
8. A copy of a notice to leave addressed to both Respondents dated 6 August 2018 was provided with the original application paperwork.
9. As part of the documentation provided by Hayley Robinson on 21 February 2019, a “Royal Mail Signed For” slip stated to be for “McHugh + Peck” at the Property was enclosed. The tracking reference was stated to be KS 7971 1449 2GB. The Applicant had, however, failed to provide any evidence of delivery/service of such correspondence on the Respondents. No explanation was provided by Hayley Robinson as to the relevance of this “Royal Mail Signed For” slip but, given that (a)

the Applicant had been directed to provide evidence of service of the notice to leave on each of the two Respondents respectively and (b) no other purported evidence of service of the notice to leave had been provided, the Legal Member assumed that this slip was intended to provide evidence of service.

10. Upon the Legal Member checking the tracking reference on the Royal Mail's Track and Trace function online, the following result was generated:

- a. Friday 13 July – “Delivery Attempted – No Answer” – Motherwell DO
- b. Friday 13 July – “Available for Collection or Redelivery” – Motherwell DO
- c. Friday 3 August – “Returned to National Returns Centre” – Motherwell DO
- d. “Sorry, we were unable to deliver this item at -3-08-2018. It will now be forwarded to our National Returns Centre to determine the sender's details.”

11. The Legal Member noted that:

- (a) the purported notice to leave was dated 6 August 2018, which was a date later than 13 July and 3 August, being the dates noted in the Track and Trace function result. Therefore, the Legal Member was not satisfied that the “Royal Mail Signed For” slip provided related to the notice to leave;
- (b) the “Royal Mail Signed For” slip indicated that the correspondence was being sent to both of the Respondents in the same correspondence, rather than each Respondent separately; and
- (c) fundamentally, the correspondence (to which the provided “Royal Mail Signed For” slip related) had not been delivered to or received by the Respondents.

12. Even if the documentation provided on 21 February 2019 were to be accepted by the Tribunal (albeit over two months late), the Applicant had still failed to comply with the direction because the Applicant had not provided evidence of service of the notice to leave dated 6 August 2018 on each of the two Respondents.

13. The Legal Member was not satisfied, on the balance of probabilities, that each of the Respondents had respectively received a notice to leave from the Applicant, as was required in terms of the 2016 Act as a prerequisite to the issue of any eviction order. Accordingly, this is another distinct reason for the rejection.

DECISION

14. For the reasons set out above, the application with case reference FTS/HPC/EV/18/2446 for an eviction order in respect of the Property is refused.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P Woodman

Legal Member

27 February 2019