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 18 of the Housing (Scotland) Act 1988 ("the Act")

Chamber Ref: FTS/HPC/EV/19/3293

Re: Property at 764 Pollokshaws Road, Flat 1/1, Glasgow, G41 2AE ("the Property")

Parties:

Mr Mohammed Alam, 738 Pollokshaws Road, Glasgow, G41 2AE ("the Applicant")

Miss Janette Ross, 764 Pollokshaws Road, Flat 1/1, Glasgow, G41 2AE, represented by Ms Holly Sloey, Trainee Solicitor, Govanhill Law Centre 79 Coplaw Street, Glasgow G42 7JG ("the Respondent")

Tribunal Members:

Jim Bauld (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be refused

Background

1. By application dated 13 October 2019, the applicant sought an order for recovery of possession under section 18 of the Housing (Scotland) Act 1988 ("the Act") and in terms of rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 201.

2. On 4 November 2019, the application was accepted by the tribunal and referred for determination by the tribunal.

3. A Case Management Discussion (CMD) took place on 10 February 2020. A note of that CMD was prepared and issued to parties. A hearing was set to take place on 20 March 2020. That hearing was postponed owing to the restrictions

which were introduced to deal with the coronavirus pandemic. The hearing was rescheduled for 21 August 2020.

The Hearing

4. The Hearing took place on 21 August 2020 via telephone case conference. The applicant and the respondent and her representative took part in the telephone case conference.

5. The tribunal explained the purpose of the hearing and the powers available to the tribunal to determine matters.

6. The tribunal asked various questions of the parties with regard to the application.

7. The Note that was issued after the CMD in February 2020 indicated various issues which would require to be determined at a hearing. Those issues included whether the service of the notices to quit had been carried out by the applicant in accordance with the relevant legal and statutory requirements. The CMD Note recommended that the applicant sought legal advice on these issues. It was noted that the applicant had been previously advised of these observations by letter from the tribunal staff.

8. The tribunal asked the applicant whether he had sought legal advice. He confirmed that he had. The tribunal asked the applicant to confirm the appropriate legal basis for the validity of the method of service of the Notice to Quit and form AT6 which had purportedly been served upon the applicant by recorded delivery post.

9. The applicant had lodged documents which included photocopies showing two envelopes each with a recorded delivery reference number. He also lodged appropriate track and trace receipts from Royal Mail. One of the envelopes had a reference number KS983579369GB. The track and trace receipt showed that this envelope had not been delivered at all. The second envelope had a reference number KS962620088GB. The track and trace receipt showed that this had been collected on 2 October 2019. The tribunal noted that both the Notice to Quit and form AT6 documents were dated 15 August 2019 and were due to become "live" on 15 September 2019.

10. The applicant was unable to explain which envelope contained which documents. The tribunal noted that the applicant had also purportedly served a Notice to Leave upon the respondent. The tribunal pointed out that the Notice to Leave applied only to the form of tenancy called the private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 and that the tenancy in question was a short assured tenancy under the Housing (Scotland) Act 1988.

11. In any event it was clear from the track and trace receipts that neither envelope had been received by the respondent prior to the purported effective date in any of the notices. Accordingly it appeared that no effective Notice to Quit had been given nor had any effective notice regarding the proposed ground of eviction been given.

12. The applicant indicated he had obtained legal advice and had been told that the documentation which he had served was sufficient. He also pointed out that he had personally handed to the respondent further copies of the notices on 25 September 2019. Again on being questioned by the tribunal he could not explain the legal basis that personal service by him constituted legally effective service of the Notice to Quit.

13. The tribunal also repeatedly questioned the applicant with regard to the validity of the notices. The tribunal indicated to the applicant that the tenancy agreement commenced on 30 April 2010 and continued until 30 April 2011. The tenancy agreement indicated it would continue thereafter by tacit relocation. On being asked by the tribunal what was meant by the phrase "tacit relocation" the applicant indicated his belief that it meant the tenancy thereafter continued on a monthly basis. The tribunal explained to the applicant that belief was not correct. The tribunal explained to the applicant that tacit relocation meant that the tenancy agreement continued after its agreed end date for the same period as set out in the Tenancy agreement. Accordingly this agreement would continue from 30th April each year until 30th April in the following year.

14. The tribunal also indicated to the applicant that a Notice to Quit in an assured tenancy in Scotland requires to advise the tenant that they must quit on an "ish" or end date of the tenancy. That date could only be 30th April in any year in this particular tenancy. The date specified in the purported notice to quit was 15th September 2019. That was not an ish date of the tenancy. Accordingly the notice was arguably invalid on that basis alone without even considering the apparently failed service.

15. The applicant was unable to provide any information to the tribunal which supported his view that the failed service by recorded delivery mail was effective service or that personally delivering the Notice to Quit to the applicant was effective service in terms of the law in Scotland.

16. The tribunal explained to the applicant that his Notice to Quit was invalid because it failed to specify correctly an ish date of the tenancy,. The tribunal explained to the applicant that even if the ish date had been correctly set out in the notice, the notice had not been properly served. There was no evidence that it had been received by the tenant through recorded delivery mail. The tribunal explained to the applicant that personal delivery by him to the respondent was not a means of effective and legal service of a Notice to Quit in Scots law. The tribunal noted that the applicant had previously raised an application for eviction under tribunal reference number FTS/HPC/EV/19/1897 which was refused because the applicant failed to produce evidence of the method of service of a Notice to Quit purportedly served in January 2019. In that application, a decision was issued indicating that the tribunal did not accept

that "***hand delivery by agents amounts to valid service (Govan Housing Association v Kane 2003 Hous LR 125, City of Edinburgh Council v Smith [2016] SC EDIN 42).***"

17. The tribunal noted that the applicant had been advised to take legal advice on this matter. Although he indicated he had been given legal advice it would appear to the tribunal that any advice which had been tendered to him was simply wrong.

18. The tribunal asked the respondent's representative for her submissions. She stated that the eviction application should be dismissed on the basis that the Notice to Quit was invalid. She confirmed that was her position and it was noted this had already been raised in responses lodged on behalf of the respondent with the tribunal. Reference was made to an email from the respondent's representative dated 7 February 2020 where they indicated their position that the requirements in respect of service of these notices under the relevant legislation had not been fulfilled.

19. The applicant eventually conceded that the Notice to Quit was invalid in law and had not been effectively served. The applicant agreed that the tribunal had no option but to refuse the application for recovery of possession and to dismiss the application

Discussion

20. In this application the applicant seeks an order for recovery of possession based on the provisions of sections 18 and 19 of the Act. That process requires the landlord to have a ground for recovery of possession as set out in schedule 5 of the Act. It also requires certain notices to be served properly on the tenant.

21. In terms of section 18 (6)(b) of the Act, the tribunal cannot make an order for possession of the property which is for the time being let on an assured tenancy which is not a statutory assured tenancy unless "the terms of the tenancy make provision for it to be brought to an end on the ground in question".

22. The tenancy agreement in this case makes no such provision. Accordingly it is necessary in law for this tenancy to be a statutory assured tenancy to enable the tribunal to make an order for possession. The tenancy can only be a statutory assured tenancy if an effective and valid Notice to Quit has been served which effectively ends the tenancy on its ish date. No such notice has been served. Accordingly the procedure in terms of section 18 cannot proceed and the tribunal cannot make an order for possession. In this application the purported Notice to Quit does not specify the ish date of the tenancy. It has also not been effectively or legally served in any valid form. The tenancy accordingly is not a statutory assured tenancy.

23. Even if the Notice to Quit had been validly and effectively served, there is no evidence that the Form AT6 which is required to be served under section 19 of the Act has been effectively served upon the tenant. Section 19(1) of the Act states that the tribunal "shall not entertain proceedings for possession" unless

that Form has been served or the tribunal considers it reasonable to dispense with the requirement of such a notice. The tribunal does not consider it reasonable to dispense with the notice and accordingly must refuse the application for the reason set out above.

Decision

The tribal refuses the order sought by the applicant and dismisses 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.

Jim Bauld

21 August 2020

Legal Member/Chair **Date**