



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

Chamber Ref: FTS/HPC/EV/21/0347

Re: Property at 88 West George Street, Coatbridge, ML5 2DD (“the Property”)

Parties:

Mrs Barbara- Anne Millar, 1B Glencairn Drive, Coatbridge, ML5 5HE (“the Applicant”)

Miss Cheryl Lindsay, Mr Jamie Mitchell, 88 West George Street, Coatbridge, ML5 2DD (“the Respondents”)

Tribunal Members:

Rory Cowan (Legal Member) and Helen Barclay (Ordinary Member)

Decision

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

- Background

This case called for a continued Case Management Discussion (CMD) on 16 September 2021 by way of conference call. The Applicant was represented by her husband Mr Graeme Millar and both Respondents appeared. The matter had been continued from a previous CMD on 27 July 2021 and had been continued for the Applicant to produce the Notice to Quit dated 8 August 2020 which it was claimed had been served on the Respondents. A detailed note was issued after that CMD setting out potential issues upon which the Tribunal may require to be addressed.

The application is dated 15 February 2021 (the Application) and seeks an Order for Possession relative to the Property in terms of Ground 1 of Schedule 5 to the Housing (Scotland) Act 1988 (the 1988 Act).

With the Application the Applicant lodged various documents including:

- 1) Copy Lease dated 8 August 2017;
- 2) Form AT6 dated 8 August 2020;
- 3) Home Report;
- 4) Section 11 Notice;
- 5) Statement and affidavit by the Applicant;
- 6) Signed acceptance by Cheryl Lindsay dated 8 August 2020; and
- 7) Letter dated 24 July 2020 addressed to Cheryl Lindsay

In addition, by email dated 6 August 2021 from the Applicant's representative, a copy of the letter dated 8 August 2020 address to the first named Respondent was produced.

- The Case Management Discussion

The Tribunal confirmed with the Applicant's representative that the letter dated 8 August 2020 was the purported NTQ that the Applicant sought to rely. Both Respondents confirmed that they had received a copy of that letter and that it was the letter that had been handed to the first-named Respondent on 8 August 2020. The parties also confirmed that they had received and read the CMD Note from 27 July 2021. Both parties confirmed that the tenancy agreement dated 8 July 2017 was the correct tenancy agreement and that it had been for an initial 3-year term expiring on 8 August 2020. It was a matter of agreement that the tenancy had thereafter continued on a month to month basis.

- Findings in Fact and Law

- 1) The Applicant and first named Respondent entered into a tenancy agreement for the Property dated 8 August 2017.
- 2) That the tenancy is subject to the provisions of the Housing (Scotland) Act 1988.
- 3) The initial term of that tenancy was 3 years ending on 8 August 2020.
- 4) That after the expiry of the initial term, the lease has continued on a month to month basis with ish or end dates on the 8th of each month starting on 8 September 2020.
- 5) That on 8 August 2020, the Applicant served a letter purporting to be a Notice to Quit on the first named Respondent and a Form AT6 addressed to both Respondents seeking to terminate the tenancy as at 31 January 2021.
- 6) That 31 January 2021 is not an ish or end date for the tenancy.
- 7) That the tenancy is one to which the provisions of section 112 of the Rent (Scotland) Act 1984 apply.
- 8) That the letter dated 8 August 2020 did not contain the prescribed information in terms of the Assured Tenancies (Notices to Quit Prescribed Information)(Scotland) Regulations 1988.
- 9) That the Applicant has failed to terminate the contractual tenancy for the Property.
- 10) That the Applicant is therefore not entitled to an order for possession in the terms sought.

- Reasons for Decision

As set out in the CMD Note dated 27 July 2021, in order for the Tribunal to be able to consider granting an order for possession in terms of Ground 1 of Schedule 5 of the Housing (Scotland) Act 1988, certain steps must be taken. Leaving to one side any questions of prior notification of the applicability of Ground 1 to a particular tenancy, a landlord must first terminate any contractual tenancy. This requires the service of a valid NTQ which gives sufficient notice, that expires on an *ish* or end date and includes certain prescribed information.

The letter dated 8 August 2020, which was served was set to expire on 31 January 2021. That is not an end or *ish* date. Further, the said letter did not include any of the prescribed information or anything which could be said to be “substantially of the same effect” (*Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd [1997] AC 749*). In terms of section 112 of the Rent (Scotland) Act 1984, no purported NTQ will be valid for the purpose of terminating a contractual tenancy of the type entered into by the parties without such prescribed information.

That being the case, the Tribunal was not in a position to grant the order or even move to consideration of whether it would be reasonable to dispense with the requirement to give prior notification of the applicability of ground 1, or deal with any potential deficiencies in the Form AT6 itself, or even deal with whether it would be reasonable to grant the order. In short, the Application failed at the first “hurdle” so to speak.

Whilst it was noted that both parties were keen for the Application to be granted (which is perhaps unusual in a case like this), because of the deficiencies in the NTQ, the Tribunal did not have the power to grant the order or to dispense with the requirement to serve a valid NTQ. It is therefore regrettable, but in the circumstances, the Tribunal had no choice but to refuse the Application.

- Decision

The Application is refused.

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.

Rory Cowan

Legal Member/Chair

16 September 2021
Date

