



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 ("The Act")

Chamber Ref: FTS/HPC/EV/21/1484

Re: Property at 5 West Fairbrae Drive, Sighthill, Edinburgh, EH11 3SY ("the Property")

Parties:

Mr Scott Neil, c/o 12 Chambers Drive, Carron, Falkirk, FK2 8DX ("the Applicant")

Ms Lynne Campbell, 5 West Fairbrae Drive, Sighthill, Edinburgh, EH11 3SY ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

The Applicant seeks an Eviction Order on the basis of Ground 4 of Schedule 3 of the Act in that it is said that the Applicant wishes to live in the Property. A Notice to Leave was produced with the Application that was completed on the basis of Ground 5 being the Ground relied on. A copy of the Tenancy was produced which confirmed that it was agreed that all notices and formal communications between the parties would be by email.

The Application had required extensive case management by the Tribunal when it was received and there was a lengthy chain of correspondence between the Tribunal and the Applicant to obtain all the information that the Tribunal considered necessary before

accepting the Application. This included asking for proof of the Notice to Leave having been emailed to the Respondent and an explanation as to why the incorrect Ground was set out in the Notice to Leave.

An image of what might have been the middle section of an email was produced, supposedly to prove that the Notice to Leave was validly emailed to the Respondent and that the Respondent had been provided with the correct period of notice. This image however seemed clearly deficient in proving that an email with the Notice to Leave was sent to the Respondent and it was impossible to identify when any such email might have been sent.

It seemed very odd to the Tribunal to be presented with an image of part of an email in this way and it was impossible to attribute any evidential value to it.

The Applicant was represented by Ms Lesley McLaughlin who was a letting agent and who had been corresponding on the Applicant's behalf regarding these matters.

The Case Management Discussion

The Application called for a Case Management Discussion (CMD) by conference call at 10 am on 18 January 2022. The Application called alongside a related Application in respect of a Payment Order.

The Applicant appeared in person along with another individual by the name of Mr Raymond Lumsden. The Tribunal were informed in advance that Mr Lumsden *"will testify that the tenant knew about and discussed the eviction in person during a visit in February 2021."*

The Applicant confirmed that Ms McLaughlin would not be representing him today and that he would proceed himself.

The Application and information about how to join the conference call had been served on the Respondent by Sheriff Officers on 16 December 2021. On the basis that the Respondent was neither present nor represented today, the Tribunal decided to continue in the absence of the Respondent.

The Tribunal began by discussing various preliminary matters. It was put to the Applicant that the evidence that supposedly showed the Notice to Leave being sent to the Respondent was deficient.

The Applicant largely pled ignorance of these matters and made frequent references to him being confident that the Respondent knew about the eviction. The Tribunal however took the view that it was irrelevant if the Respondent knew about the eviction

and pointed out that it was fundamental to show that a Notice to Leave was validly served by email as set out in the tenancy.

The Tribunal could not understand why the Tribunal had been sent an image of an email in such a strange manner. These issues had also been canvassed when the Application was first received by the Tribunal and the Applicant had been given extensive opportunities to address these matters.

The Tribunal had informed parties that no evidence would be heard as this was a CMD, although the Tribunal did consider that the evidence that Mr Lumsden was apparently intending to give would be of no use in proving if and when a Notice to Leave was emailed to the Respondent conform to the tenancy.

In amongst the papers there was also an email attaching a Notice under s 11 of the Homelessness Etc. (Scotland) Act 2003 that made reference to the eviction being on the basis of rent arrears. The whole Application appeared riddled with inconsistencies.

The Tribunal discussed these difficulties with the Applicant and also considered the reasonableness or otherwise of making any Eviction Order.

During this line of questioning, it was apparent that the Applicant really had no idea of the domestic circumstances of the Respondent. The Applicant thought she had children but didn't know how many or how old they were or what the Respondent's employment status was. The Respondent had been the Applicant's tenant since 2012 but appeared unabashedly ignorant of her circumstances.

As for the reasons why the Applicant wanted to live in the Property himself, the Tribunal were informed that the Applicant wished to live there because the Property has three bedrooms and the Applicant was hopeful that his adult sons might stay there with him from time to time. The Applicant described having recently gone through a separation and divorce and having had to change his living circumstances.

Having heard from the Applicant and having considered all of the documentation the Tribunal adjourned to consider its decision.

Decision

Having considered matters, the Tribunal took the view that there was no adequate basis at all for concluding that the Respondent had received the Notice to Leave as per s 50 of the Act.

It was impossible therefore to conclude whether the Applicant had complied with the provisions set out in s 54, s 55 or s 62 (4) of the Act. The Tribunal considered that any evidence that the tenant "*knew about the eviction*" was irrelevant as it was simply

fundamental that the Applicant could show that they emailed the Notice to Leave to the Respondent on the date suggested. It seemed this basic requirement could not be met and so the Tribunal decided to refuse 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.

	–	<u>18 January 2022</u>
Legal Member/Chair		Date