



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 (“2016 Act”)

Chamber Ref: FTS/HPC/EV/21/1828

**Re: 24 Frederick Street, Downfield, Dundee, DD3 8RR
 (“the Property”)**

Parties:

**Mr George McGurk, Old Smithy, Newbigging Road, Tealing, Dundee, DD4 0QX
 (“the Applicant”)**

**Mr Alexander Mordente and Miss Linzi Cook, 24 Frederick Street, Downfield,
 Dundee, DD3 8RR
 (“the Respondents”)**

Tribunal Members:

Pamela Woodman (Legal Member) and Jane Heppenstall (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/EV/21/1828 took place at 10am on Friday 5 November 2021 by teleconference call (“**the CMD**”). The Applicant was present at the CMD. The Respondents were not present nor represented at the CMD. The clerk to the Tribunal was Caitlin Munro. This case was conjoined with case reference FTS/HPC/CV/21/1829 and heard at the same time.

DECISION (in absence of the Respondents)

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

BACKGROUND

1. 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.

2. The order sought from the Tribunal was an eviction order against the Respondents in respect of the Property.
3. The application was dated 28 July 2021 and was accompanied by various documents.
4. The Tribunal was provided with a copy of the private residential tenancy agreement between the Applicant and the Respondents dated 17 December 2019 ("**Tenancy Agreement**").
5. Various requests for information and/or documentation were made by the Tribunal following receipt of the application. The Applicant provided further information and/or documentation to supplement his original application paperwork.
6. A notice of acceptance of the application was issued dated 23 September 2021 under rule 9 of the HPC Rules, which confirmed that the application paperwork had been received by the Tribunal between 29 July and 6 September 2021.
7. The possession/eviction ground stated in the application form was as follows:

"GROUND 12 – THE TENANTS WERE IN ARREARS FOR MORE THAN 3 MONTHS AT THE DATE ON WHICH THE NOTICE OF PROCEEDINGS WAS SERVED. THE ARREARS HAVE INCREASED AS AT THE DATE OF APPLICATION BEING MADE."
8. The Tribunal had received a copy of the two certificates of intimation issued by Steven Cameron (sheriff officer) of Stirling Park which confirmed that the letters with enclosures from the Tribunal dated 1 October 2021 had respectively been served on each of the two Respondents on 5 October 2021 by depositing the letter within the letterbox of the Property, having checked with a neighbour that they respectively still resided at the Property. This letter notified each Respondent of the date and time of the CMD, requested written representations by 22 October 2021 and enclosed a copy of the application.
9. The Tribunal was satisfied, on the balance of probabilities, that the Respondents had been provided with proper notification of the CMD and so it could proceed, notwithstanding their absence.
10. The Respondents had been invited to provide written representations by 22 October 2021 but had not done so. One of the Respondents had contacted the Tribunal's administration team by telephone on 4 November 2021 to ask if they were required to attend the CMD.
11. The Tribunal noted that the Applicant was the registered landlord of the Property.

12. The Tribunal also noted that the Applicant was not the registered proprietor of the Property (title number ANG53032), the registered proprietor being G McGurk Joinery Limited.
13. However, the Applicant confirmed that he was the sole director of G McGurk Joinery Limited, which was confirmed by the Tribunal to be correct based on information publicly available from Companies House. The Tribunal also noted that the information from Companies House indicated that the Applicant was also the only person noted as a person with significant control of the company. During the CMD, the Applicant (in his capacity as sole director of the company) confirmed that the Applicant (in his personal capacity) was authorised to register as the landlord of the Property, grant the tenancy agreement and take the current proceedings.
14. A video had been provided to the Tribunal by the Applicant in advance of the CMD which, the Applicant submitted, showed the Applicant knocking on the door of the Property and posting the notice to leave through the letterbox of the Property on 19 January 2021.
15. The copy of the (unsigned and undated) notice to leave provided with the application paperwork had a handwritten note on it which stated that it had been “ISSUED TO TENANTS BY HAND 19.1.21”.
16. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

17. The Applicant confirmed that he had not handed the notice to leave to either of the Respondents personally and that he also had not e-mailed the notice to leave to either of them. He confirmed that he had posted the notice to leave through the letterbox at the Property on 19 January 2021.
18. There was a text message dated 23 December 2021 included within the application paperwork which appeared to be from one of the Respondents and to suggest that the Respondents had requested that the Applicant commence the proceedings for an eviction order.
19. However, the Respondents had not provided any submissions to the Tribunal and so their position regarding the application for an eviction order was not known.
20. In terms of section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 which applies to the service of a notice to leave, there are designated ways in which a notice to leave may be validly served. The relevant provisions of section 26 are summarised on page 6 of the notice to leave in the guidance notes for tenants on delivery of the notice to leave (a copy of which was included in the application paperwork).
21. Section 26(2) is currently in the following terms:

“The document may be served on the person—

- (a) by being delivered personally to the person,
- (b) by being sent to the proper address of the person—
 - (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 (c. 26)), or
 - (ii) by a postal service which provides for the delivery of the document to be recorded, or
- (c) by being transmitted to the person electronically.”

FINDING IN FACT

22. The Tribunal found that the notice to leave had not been validly served because it had not been served by one of the permitted methods of service set out in section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 nor by sheriff officers.

REASON FOR DECISION

23. Accordingly, there was no valid notice to leave in respect of or based on which an eviction order may be granted.

DECISION

24. The Tribunal refused the application under section 51(1) of the 2016 Act for an eviction order.

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.

Pamela Woodman

05 November 2021

Chair

Date