



**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/21/2223

Re: Property at Craigendunton, Waterside, Kilmarnock, KA3 6JJ (“the Property”)

Parties:

Mr Mark Baird, Craigendunton Cabin, Waterside, Kilmarnock, KA3 6JJ (“the Applicant”)

Mrs Beth AKA Mia Barclay AKA Connor the occupant, Mr Joe AKA Raymond Reid AKA Bradley, Craigendunton, Waterside, Kilmarnock, KA3 6JJ (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. By application dated 5 September 2021 the Applicant applied to the Tribunal for an order for possession of the property under Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988. He submitted copies of bank statements, a rent schedule, Form AT6, Notice to Quit, pre-action letters and intimation of a Section 11 Notice to the Local Authority in support of the application.
2. Following further correspondence with the Applicant the application was accepted and a Case Management Discussion (CMD) assigned.
3. Intimation of the CMD was sent to the Applicant by post and served on the Respondent by Sheriff Officers on 22 December 2021.

4. The Tribunal received on 13 January 2022 unsigned written representations from a person purporting to be the sole tenant of the property together with photographs allegedly showing the condition of the property.

The Case Management Discussion

5. A Case Management Discussion (“CMD”) was held by teleconference on 26 January 2022. The Applicant attended in person. The Respondents did not attend nor were they represented.
6. The Tribunal referred the Applicant to the written representations submitted by a person claiming to be the tenant of the property and queried if the Applicant had read the document. The Applicant said he had received it but had not read it as he thought he might be upset by it.
7. The Tribunal briefly explained its contents. The Applicant agreed that he had in 2014 shown the property to an individual he knew at the time as Beth Barclay and it was she who had agreed to rent the property. The Applicant denied there had ever been a written tenancy agreement although he had sent a Private Residential Tenancy Agreement in the joint names of the parties to them for signing about four years ago but it had never been returned. He said Ms Barclay had told him she wanted to seek legal advice before signing it.
8. The Applicant explained that he had thought that the Respondents were going to buy the property after a short period of renting and had not at that time been too concerned about not having a written agreement. As time had passed, he said he had tried to get a written agreement but this had been refused.
9. The Tribunal ascertained from the Applicant that on 23 January 2021 he had attended at the property and handed a single copy of the Notice to Quit and Form AT6 to the Second Respondent, Joe Reid. The Applicant confirmed he had not given a copy to Ms Barclay. The Tribunal noted that the forms were drawn up in the joint names of Joe Reid and Beth Barclay.
10. The Applicant said he had delivered the notices himself as the Respondents would not have accepted recorded delivery post and he thought Sheriff Officers would have had difficulty accessing the property due to it having an electric gate and high walls.
11. The Applicant said he had delivered the pre-action letters to the Respondents by posting them into the external post-box at the property.
12. The Tribunal discussed with the Applicant the issues as regards the correct name of the tenant given that it appeared that it was in fact a sole tenancy and also the failure of the Applicant to properly serve the Notice to Quit on the first Respondent, who he knew as Ms Barclay. The Tribunal indicated that it ought to have been possible for the Applicant to have ascertained in advance of raising proceedings or indeed serving notices the correct name of the tenant of

the property by using Sheriff Officers or tracing agents who would have access through public records to the occupiers of the property.

Findings in Fact

13. The Applicant entered into an assured tenancy with a person he believed to be Ms Beth Barclay as sole tenant,
14. The tenancy commenced on 26 July 2014. At a rent of £1000.00 per month.
15. Some rental payments were made in cash and some by bank transfer.
16. Rent arrears have accrued over a number of years amounting to many thousands of pounds.
17. The property is occupied by the person the Applicant knows as Ms Beth Barclay, her son who is aged about 13 and by the person the Applicant knows as Mr Joe Reid.
18. The Applicant served a Notice to Quit and Form AT6 in the joint names of Joe Reid and Beth Barclay by delivering them personally to Mr Joe Reid on 23 January 2021.
19. No Notice to Quit or Form AT6 was delivered personally to Ms Beth Barclay.
20. Pre-action letters were sent to the Respondents by delivering to the external post-box at the property.
21. A Section 11 notice was sent to the Local Authority by email on 9 August 2021.

Reasons for Decision

22. Although the Tribunal had some sympathy for the Applicant given the level of rent arrears that appeared to have arisen over a number of years it did not consider that an order for possession could be granted as there had been a complete failure on the part of the Applicant to properly serve the Notice to Quit and Form AT6 on the Respondent Ms Beth Barclay.
23. From the available facts provided by the unnamed tenant's written submission and the Applicant's oral submissions the Tribunal was satisfied that there was an assured tenancy in place between the Applicant and the person the Applicant knew as Beth Barclay alone.
24. There was no written tenancy agreement as far as the Tribunal could ascertain and therefore the tenancy would endure from year to year.

25. The tribunal concluded that although the Notice to Quit and Form AT6 had included the name of Mr Joe Reid as a tenant that in itself may not have invalidated the notices but failure on the part of the Applicant to deliver the Notices to Ms Barclay personally was fatal to the application. It was not in the Tribunal's view sufficient for a landlord to serve a notice by leaving it for a tenant with an occupant at the property. Personal service is required and that was not done in this case. If service of the notice to Quit and Form AT6 has not been properly effected upon a tenant then everything that follows is procedurally flawed.
26. The Tribunal also had concerns about the designation of the Respondent. It was of the view that if the Applicant was unsure of the correct name of his tenant, then he ought to have instructed Sheriff Officers or Tracing Agents to have made use of the facilities they have at their disposal through access to public records to identify the occupants at the property before taking any steps to recover possession.
27. Having carefully considered the written representations and the oral submissions the Tribunal considered that it could not on the basis of the information before it grant an order for possession nor did it consider that the defects in service of the Notices could be cured by a continuation of the application.

Decision

28. 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.

Graham Harding

**Graham Harding
Legal Member/Chair**

**26 January 2022
Date**