



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

Chamber Ref: FTS/HPC/EV/22/0667

Re: Property at 7 Niddrie Square, B/1, Glasgow, G42 8QX (“the Property”)

Parties:

Mrs Allison Hussain, 430 Shields Road, Glasgow, G41 1NS (“the Applicant”)

Mr Saif Monir, 7 Niddrie Square, B/1, Glasgow, G42 8QX (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Miss E Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that no order should be granted

Background

1. This is an application received in the period between 7th and 30th March 2022, made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an eviction order under ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) in respect of the Property which is the subject of a Private Residential Tenancy agreement between the parties commencing on 12th April 2020.
2. The Applicant’s representative lodged a copy of the tenancy agreement, copy section 11 notice, notice to leave dated 6th May 2021, stating that an application would not be submitted to the Tribunal before 7th November 2021, a rent statement, an affidavit by Saqib Deen stating that service was made on the Respondent by hand delivery on 7th May 2022, and copy correspondence sent to the Respondent.
3. By email dated 10th June 2022, the Respondent’s representative lodged written representations, authorities and productions.

4. By email dated 5th July 2022, the Respondent's representative stated that the Respondent was unwell and unable to attend the forthcoming Case Management Discussion.

Case Management Discussion

5. A Case Management Discussion ("CMD") took place by telephone conference on 6th July 2022. Neither party was in attendance. The Applicant was represented by Mr Saqib Deen, Apex Property Services. The Respondent was represented by Ms Maureen Smith, Solicitor.

Preliminary point on service of Notice to Leave

6. The Tribunal heard arguments on the matter set out in the written representations made by Ms Smith regarding the competency of the application. It was her submission that the application was not competent because the Notice to Leave was not properly served on the Respondent. Ms Smith had referred to the Guidance Notes for Landlords, which state that the Notice must be served by a) handing to the tenant; b) sending by recorded delivery; or c) emailing (if there has been previous agreement that email is the preferred contact method); and Adrian Stalker's "Evictions in Scotland" 2nd edition, page 314, which states that the Notice must be served in accordance with section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 ("the 2010 Act"), which provides:

26 Service of documents

- (1) This section applies where an Act of the Scottish Parliament or a Scottish instrument authorises or requires a document to be served on a person (whether the expression "serve", "give", "send" or any other expression is used).
- (2) 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) where subsection (3) applies, by being sent to the person using electronic communications.

Ms Smith also referred to the terms of Rule 109 and section 52(3) of the 2016 Act, stating that the Notice to Leave was not given to the Respondent as required by both provisions.

7. Mr Deen said he believed the Notice to Leave had been properly served by delivery through the letter box into the Property. The Respondent was in the Property at the time and had opened the outer common door for Mr Deen, but had refused to open the door to the Property, so there was no option but to post the Notice through the door. Responding to questions from the Tribunal regarding why the only method of service agreed in terms of the tenancy agreement, i.e. email service, was not used, Mr Deen said he had not been involved in managing the tenancy or drawing up the tenancy agreement and was not aware this was the agreed method.
8. Ms Smith referred to her written representations and asked that the application be dismissed.
9. The Tribunal adjourned to consider matters.
10. The Tribunal decided that service of the Notice to Leave was not competently made in terms of the 2010 Act. There is no provision for service by leaving at the Property. The Tribunal observed that the Applicant may wish to consider whether any method of service other than that provided for in the tenancy agreement is competent, and may be advised to take advice on this matter.
11. The Tribunal did not hear any arguments on the ground for eviction or reasonableness.

Decision

12. No order is granted.

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.

H Forbes

Legal Member/Chair

6th July 2022
Date