



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/20/1965

Re: Property at 234F Main Street, Barrhead, Glasgow, G78 1SR (“the Property”)

Parties:

Mrs Gayle Connolly, 17 East Shrubbery, Redlands, Bristol, BS6 6SX (“the Applicant”)

Miss Jeanette Gillespie, Mr Lee MacIver, 234F Main Street, Barrhead, Glasgow, G78 1SR (“the Respondents”)

Tribunal Members:

Nairn Young (Legal Member) (in the absence of the second-named respondent)

Decision

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

- Background

This is an application for an eviction order against the Respondents, who rent the Property from the Applicant in terms of a private residential tenancy. It called for a case management discussion (‘CMD’) at 10am on 27 November 2020 by teleconference. The Applicant called in to the conference personally, as did the first-named respondent. The second-named respondent did not call in to the conference and was not represented.

- Findings in Fact

1. The Respondents let the Property from the Applicant in terms of a private residential tenancy with a start date of 4 July 2019.
2. On 14 June 2020, the Applicant's agent left a copy of a written notice addressed to the Respondents, in the form of a 'notice to leave' as set out in the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017, at the Property.
3. The notice stated that the ground the Applicant intended to rely on for eviction was, "Your Landlord intends to live in the Let Property."
4. It also stated that the earliest date upon which Tribunal proceedings could be raised was 14 September 2020.
5. On 11 September 2020, the Applicant served a notice in terms of s.11 of the Homelessness (Scotland) Act 2003 on East Renfrewshire Council.
6. This application was accepted by the Tribunal on 19 October 2020.
7. Both at the date of service of the notice described at 2. above, and at the date of the CMD, the Applicant intended to live in the Property as her only or principal home for at least three months.
8. The Applicant is currently residing in Bristol temporarily, but has been told she must leave that accommodation.
9. The second-named respondent no longer resides at the Property.
10. The first-named respondent continues to reside at the Property.
11. The first-named respondent is in contact with homelessness services at her local council.

- Reasons for Decision

12. Any application for an eviction order in regard to a private residential tenancy, must be accompanied by a 'notice to leave' that has been served on the tenant. Section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act') defines what a 'notice to leave' is, so far as is relevant to this case, as follows:

"62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

...

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.”

13. It is accepted that, in this case, the notice period defined in s.54(2) of the Act was 3 months, as a result of the operation of para.2 of Schedule 1 to the Coronavirus (Scotland) Act 2020 (‘the 2020 Act’). On that basis, the notice served by the Applicant fit all of the requirements in s.62, with the exception of that stated at s.62(1)(b). The notice was ‘sent’ on 14 June 2020 and therefore must be taken to have been received 48 hours later, on 16 June 2020. The three-month notice period therefore ended on 16 September 2020; and the day after that is 17 September 2020. That last date is the date that should have been entered on the notice.

14. Para.10 of Schedule 1 to the 2020 Act deals with an error such as this. It states (again, so far as relevant to this case):

“10 Errors in notices

(1) Where a notice to which this paragraph applies is completed without taking proper account of paragraphs 1 to 9—

(a) the notice is not invalid by reason of that error, but

(b) it may not be relied upon by the landlord for the purpose of seeking an order for possession (however described) until the date on which it could have been relied upon had it been correctly completed.

...

(3) This paragraph applies to—

(a) a notice to leave within the meaning of section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 served on a tenant, ... while this paragraph is in force.”

The phrasing of paragraph 10(3)(a) is unfortunate, in that it apparently renders this exception inoperable in respect to notices that purport to be notices to leave, but fail, by reason of an error in their completion, to meet the requirements of s.62 of the Act. Given that the only errors that could be covered by paragraph 10 are errors that would prevent a notice from fulfilling those requirements, however, this must be construed as a drafting error, and the provision should be read as applying to a notice purporting to be a notice to leave, rather than only a notice that does in fact meet the definition in s.62 of the Act.

15. Applying that reading, the Applicant could rely on the notice from 17 September 2020. She is therefore entitled to rely on it for the purposes of the CMD and did so in inviting the Tribunal to grant the order.
16. There is no dispute that the Applicant intends to live in the Property as her only residence for at least three months. The only question that remains to be answered by the Tribunal, in terms of establishing whether the ground relied on applies, is therefore whether it is reasonable to grant an eviction order. The Respondent pointed out that she would be made homeless by the order.
17. While there is undoubtedly significant prejudice to the Respondent in an order being granted that will render her homeless, the Tribunal must weigh this against the impact on the Applicant of not making the order. She is also at risk of becoming homeless, since she has been told to leave her current accommodation. In such circumstances, there must be a strong presumption that she should be allowed to use the property that she owns for her own needs. The Tribunal also notes that the Respondent will be entitled to support from her local authority and has already begun the process of engaging with

them, which mitigates the prejudice to her. On that basis, the Tribunal determined that it would be reasonable to grant an eviction order.

18. For these reasons, the Tribunal determined that ground 4 of Schedule 3 the Act applies and, consequently, that an eviction order should be granted.

- Decision

Eviction order 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.

Nairn Young
Legal Member/Chair

02 December 2020

Date