



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

Chamber Ref: FTS/HPC/EV/22/1488

Re: Property at Flat 2/1, 26 Belsyde Avenue, Glasgow, G15 6AR (“the Property”)

Parties:

Mr Edward Baillie, 3 White City Close, London, W12 7EB (“the Applicant”)

, Flat 2/1, 26 Belsyde Avenue, Glasgow, G15 6AR (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the application.

Background

1. The Applicant submitted an application under Rule 109 for an order to evict the Respondent from the property.
2. This case called for case management discussions (CMDs) on 7 July 2022 and 4 October 2022. Reference is made to the Notes and Notices of Direction issued following those CMDs.
3. On 28 December 2022, the Tribunal received an email from the Applicant’s representative containing written representations and attaching a statement from the Applicant and an updated rent statement.
4. On 4 January 2023, the Tribunal received an email from the Respondent’s representative attaching productions and providing details of a witness the Respondent intended to call.

5. On 12 January 2023, the Tribunal received an email from the Respondent's representative attaching a third production.

The Hearing

6. The Applicant was represented by Ms Bruce who was accompanied by her colleague, Mr Cairns (observer). The Respondent participated in the Hearing and was represented by Mr Christman, who was accompanied by Miss King (observer).
7. The Tribunal referred to the Note of the CMD on 4 October 2022, which set out the issues to be determined. The Tribunal noted from the email from the Applicant's representative dated 28 December 2022 that it was accepted that there was an error in the Notice to Leave. The Tribunal directed parties' attention to the terms of section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") and invited parties' representative to make any further submissions about the validity of the Notice to Leave.
8. The Applicant's representative had taken advice from the Scottish Association of Landlords. It was submitted that although there was an error in the Notice to Leave, there was no prejudice to the Respondent. It was advanced that the error in the Notice to Leave had not been identified when the application was submitted or at the CMD on 7 July 2022. The Applicant did not have any evidence to demonstrate when the Respondent received the Notice to Leave. The Applicant's representative did not accept that the Notice to Leave was invalid.
9. The Respondent's representative did not wish to make any further submissions on the point and relied upon the submission made at the CMD on 4 October 2022.
10. The Tribunal adjourned the Hearing to consider the brief submissions. Having concluded deliberations, the Tribunal reconvened the Hearing and explained that the Notice to Leave did not comply with the terms of section 62 of the 2016 Act and was therefore invalid. That being so, the Tribunal did not require to consider the issue of reasonableness. The Tribunal could not entertain the application and the application was dismissed.

Reason for Decision

11. The Tribunal considered certain relevant provisions in the 2016 Act, namely:-

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) 84 days after it begins if subsection (3) does not apply.

(3) This subsection applies if—

- (a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or
- (b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
- (i) that the tenant is not occupying the let property as the tenant's home,
- (ii) that the tenant has failed to comply with an obligation under the tenancy,
- (iii) that the tenant has been in rent arrears for three or more consecutive months,
- (iv) that the tenant has a relevant conviction,
- (v) that the tenant has engaged in relevant anti-social behaviour,
- (vi) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.
- (4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

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.
- (2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.
- (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.

12. For the purposes of section 62(1)(d), the relevant regulations are the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. Schedule 5 of those regulations sets out the prescribed form for a Notice to Leave. Part 4 of that form is set out as follows:

Part 4 THE END OF THE NOTICE PERIOD

An application will not be submitted to the Tribunal for an eviction order before (insert date). This is the earliest date that the Tribunal proceedings can start and will be at least the day after the end of the relevant notice period (28 days or 84 days depending on the eviction ground or how long you have occupied the Let Property).

Signed:

(Landlord(s) or Agent:

Dated:

13. In the present case, the date entered on the Notice to Leave, after the words "...eviction order before" was "12/05/2022". The date of signature of the Notice to Leave was "12/04/2022". The Notice to Leave was served by email and by recorded delivery post on 12 April 2022.
14. The Tribunal also had regard to 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.

(3) This subsection applies where, before the document is served, the person authorised or required to serve the document and the person on whom it is to be served agree in writing that the document may be sent to the person by being transmitted to an electronic address and in an electronic form specified by the person for the purpose.

(4) For the purposes of subsection (2)(b), the proper address of a person is—

(a) in the case of a body corporate, the address of the registered or principal office of the body,

(b) in the case of a partnership, the address of the principal office of the partnership,

(c) in any other case, the last known address of the person.

(5) Where a document is served as mentioned in subsection (2)(b) on an address in the United Kingdom it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

(6) Where a document is served as mentioned in subsection (2)(c) it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

15. The Notice to Leave was served on the Respondent on 12 April 2022. The Applicant produced evidence in the form of a copy email sent to the Respondent dated 12 April 2022 and a receipt from Royal Mail dated 12 April 2022. The receipt shows that the Notice was served at the “proper address” of the Respondent. This constitutes service in terms of section 26(2)(b) of the 2010 Act. Accordingly, in terms of section 26(5), the Notice to Leave “is to be taken to have been received 48 hours after it is sent unless the contrary is shown.” This accords with section 62(5) of the 2016 Act which provides “it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent”. Therefore the Notice to Leave in the present case can be taken to have been served on 14 April 2022.
16. In terms of section 54 of the 2016 Act, the relevant notice period in the present case is 28 days because the eviction ground stated in the notice is ground 12 in respect of rent arrears. The notice period therefore began on 14 April 2022, being the day that the Respondent received the Notice to Leave. The notice period expired on 12 May 2022.

17. In terms of section 62(4) the date specified in part 4 of the Notice to Leave is the day falling after the day on which the notice period expired. In order to comply with section 62(1)(b) and (4), the date which ought to have been specified in the Notice was 13 May 2022. The date specified in the Notice to Leave produced by the Applicant is 12 May 2022, being one day earlier than the date which ought to have been stated.

18. The error in the Notice to Leave is not minor and causes the Notice to fail in achieving one of its fundamental purposes. For the reasons set out above, the Tribunal determined that the document that accompanied the application was not “a copy of a notice to leave” as required by section 52(2)(a) of the 2016 Act. The Tribunal therefore cannot entertain the application and it is therefore dismissed.

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.

Nicola Irvine

Legal Member/Chair

12 January 2023

Date