



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 19 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/EV/22/0720

Re: Property at 86 Ashgill Road, Milton, Glasgow, G22 6QN (“the Property”)

Parties:

Mr Thomas Graham, C/O 32-34 Kirkintilloch Road, Bishopbriggs, G64 2AL (“the Applicant”)

Ms Linda McKinnon, 86 Ashgill Road, Milton, Glasgow, G22 6QN (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

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

On 8th March 2022 the Applicant lodged an Application with the Tribunal under Rule 65 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property.

Lodged with the application were: -

1. Copy AT6 dated 2nd August 2021 stating proceedings could not be raised before 5th February 2022
2. Copy Notice to Quit dated 2nd August 2021 with the date to quit given as 5th February 2022
3. Section 11 Notice
4. Rent Statement

On 30th March 2022 the Tribunal wrote to the Applicant's agent requesting, amongst other things, a copy of the tenancy agreement, proof of service of the Notice to Quit and evidence that the Applicant had complied with the Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020 and evidence of compliance.

On 4th April 2022 the agent wrote to the Tribunal enclosing a copy of the first page of tenancy agreement, copy of the email to the local authority sending the Section 11 Notice and advising that they had not complied with the Pre Action requirements regulations as the respondent's arrears began prior to 27th May 2020.

The Tribunal wrote again to the agent on 28th April 2022 asking for a section 11 notice referring to the correct legislation, proof of service of the corrected notice, evidence of service of the AT6 and Notice to Quit, the whole tenancy agreement, and asking for legal submissions on the validity of the Notice To Quit as it does not coincide with an ish date.

On 28th April 2022 the agent wrote to the tribunal in response enclosing copy of email to the local authority with the section 11 Notice attached, copy of proof of posting and signature of receipt in relation to the Notice to Quit and AT6 (the receipt of positing was dated 5th August 2021 and the date the envelope was signed for was 7th August 2021), a full copy of the tenancy agreement and an explanation that the Notice to Quit did not need to adhere to an ish date when the notice was for rent arrears. They said that the tenant had been given 6 months notice instead of 2, and therefore the tenant had been given plenty of time to try and sort her arrears out, and that for any other ground the notice would have to apply to the ish date.

On 26th May 2022 the Tribunal wrote to the agent asking for evidence of compliance with the pre action requirements and pointing out again that the Notice to Quit did not tie in with an ish date. It was pointed out that the agent may wish to rely on section 18 of the Act, but that the tenancy agreement did not appear to narrate the terms of the eviction grounds in full as required by the decision in the case of Royal Bank of Scotland -v- Boyle and asking for a submission on the validity of the Notice. The letter also pointed out that the section 11 notice still did not refer to the correct legislation, And a correct one was required.

On 30th May 2022 the agent replied confirming that the Pre Action Requirements had not been complied with as the arrears began prior to 27th May 2020, the Notice to quit did not need to tie in with an ish date and sending a further section 11 Notice.

On 20th June 2022 the Tribunal wrote to the agent advising that the section 11 Notice was still incorrect and asking for a correct one, and confirming that the Notice to Quit was invalid, and that the agent would need to address the convenor at a Case Management Discussion that the tenancy agreement makes provision for the contract to be brought to an end on Ground 11.

On 1st July 2022 the agent wrote to the Tribunal quoting from the tenancy agreement clause Fifth and stating that she felt that the ish should not be taken in to account with the arrears that are outstanding before covid and that the owner had given the tenant

time to try and get herself sorted out on numerous occasions before taking further action.

On 2nd August 2022 the Tribunal accepted the application but also wrote to the agent advising that the Notice to Quit and AT6 would require to be addressed at the Case Management Discussion and that a correct section 11 Notice would need to be lodged.

The Application was served on the Respondent by Sheriff Officers on 24th August 2022.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented his letting agent, Mrs Nixon. The Respondent was represented by Miss McLeod of the Legal Services Agency.

The Chairperson introduced everyone and explained the purposes of a CMD in terms of Rule 17 of the Rules.

The Chairperson asked Mrs Nixon to confirm that she was seeking eviction and she said that she was. The Chairperson noted that there were several issues that had been raised during the sifting process and required to be addressed.

The Chairperson made reference to the Tribunal’s email of 2nd August 2022 requiring that a correct section 11 Notice be served. Mrs Nixon said that she had not done so as she thought it better to wait until the CMD, which she described as a meeting, to see what she needed to do.

The Chairperson asked for the Tribunal to be addressed on the validity of the Notice to Quit. Mrs Nixon said that she had spoken to someone at a council who had told her that a Notice to Quit for rent arrears did not need to coincide with an ish date.

Mrs Nixon could not address the Tribunal on why she might be able to proceed simply with an AT6.

Mrs Nixon was asked to address the Tribunal regarding compliance with the Pre Action-Requirements. She said that no letters had been sent and that the arrears had begun pre covid and that the respondent had been given plenty of time to sort out the arrears. She could not give a reason as to why the Applicant might not have to comply with the law.

The Tribunal concluded that the Application was frivolous and had not chance of succeeding.

Findings In Fact

1. The parties entered in to a tenancy agreement with an initial term beginning on 19th August 2015, running until 19th February 2016 and two monthly thereafter;
2. A Notice to quit was served dated 2nd August 2021 for 5th February 2022;
3. This did not correspond to an ish date;
4. An AT6 was served dated 2nd August 2021 for 5th February 2022;
5. The tenancy agreement did not fully narrate the terms of Ground 11 of Schedule 5 of the Housing (Scotland) Act 1988;
6. The Notice to Quit and AT6 were posted on 5th August 2021;
7. The Notice to Quit and AT6 were signed for by the Respondent on 7th August 2021;
8. A full six months' notice was not given;
9. No correct section 11 Notice was lodged;
10. No letters had been sent to the Respondent to confirm with the pre Section Requirements.

Reason for Decision

The Applicant had not served notice to bring the tenancy to an end, had not complied with the Pre Action Requirements and had not lodged a correct section 11 Notice. The Application therefor was frivolous and bound to fail.

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.

**Alison Kelly
Legal Member/Chair**

**7th October 2022
Date**