



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/20/1720**

**Re: Property at 16 Mossend Drive, West Calder, EH55 8QG (“the Property”)**

**Parties:**

**Miss Cheryl Scott, 4 Eastcroft Court, Livingston, EH54 7ET (“the Applicant”)**

**Miss Lauren Travers, Mr Paul Coleman, 16 Mossend Drive, West Calder, EH55 8QG (“the Respondent”)**

**Tribunal Members:**

**David Preston (Legal Member)**

**Decision**

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

**Background**

1. This was a Case Management Discussion (CMD) in respect of an application for eviction arising from a Private Rented Tenancy Agreement between the parties dated 12 & 18 February 2020.
2. By Notice of Acceptance dated 17 September 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned. A letter of Intimation and Notice of the CMD along with a copy of the application and supporting papers were served on the respondents conform to Certificates of Service by Sheriff Officer dated 28 September 2020
3. On 28 October 2020 a CMD was convened by telephone in accordance with the provisions dealing with business during the COVID-19 pandemic. The applicant appeared and represented herself. There was no appearance by or on behalf of the respondent. the tribunal was satisfied that due notice had been given to the respondents and they had voluntarily waived their rights to be present or represented and it was content to proceed in their absence.

4. The tribunal had before it:
  - i. Application dated 11 August 2020 with supporting documentation.
  - ii. Private Rented Tenancy Agreement dated 12 and 18 February 2020.
  - iii. Notice to Leave dated 15 May 2020.
  - iv. Notice under section 11 of the Homelessness etc (Scotland) (Act) 2003.
  - v. Emails and text messages between the parties.
  - vi. Written representations from both parties

## **Discussion**

5. The convener referred the applicant to the Directions issued by the Tribunal dated 17 and 29 September 2020 which called for submissions regarding the date of the application in relation to the date specified in the Notice to Leave before which an application would not be made to the Tribunal.
6. The Notice to leave dated 15 May 2020 gave a period of three months' notice in terms of the Act and specified the earliest date on which an application would be made to the Tribunal as 20 August 2020. The application was dated 11 August 2020 and had been received by the Tribunal on 17 August 2020.
7. The applicant explained that she worked as a flight attendant and was leaving the UK for work before 20 August. She had felt it essential to submit the paperwork as soon as possible as she is expecting a baby in November and had nowhere to stay, which was why she was seeking to recover possession of property. She had been told by the tenants that they would be unable to vacate the property by 20<sup>th</sup> August. She therefore completed and submitted the application before she left the country as time was of the essence.
8. The convener explained that the Act is clear in that a landlord may not make an application until after the expiry of the appropriate period of notice which should be the date specified in the Notice to Leave. The date so specified was 20 August 2020 although the tribunal noted that the proper period of notice within fact expire on 18 August 2020. In any event for an application to be lodged in advance of 18 August 2020 renders it premature and thereby incompetent.

## **Reasons for Decision**

9. Rule 17 of the Regulations states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information presented to it, it was able to determine the application at the CMD.
10. In coming to its decision, the tribunal had regard to the representations and documents presented to it in support of the application as well as the representations and documents submitted by the parties.

11. The tribunal accordingly determines that the application must fail and dismisses the application.

### **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.**

**D Preston**

28 October 2020