



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 18 of the Housing (Scotland)  
Act 1988**

**Chamber Ref: FTS/HPC/EV/19/0359**

**Re: Property at Flat 1/R, 1 Castlebrae Gdns, Glasgow, G44 4EB (“the  
Property”)**

**Parties:**

**Kelvin River Property Estates Ltd, 50 Victoria Crescent Road, Glasgow, G12  
9DE (“the Applicant”)**

**Ms Kelly Ann Heffernan, Flat 1/R, 1 Castlebrae Gdns, Glasgow, G44 4EB (“the  
Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

**Decision (in absence of the Respondent)**

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

**Background**

This is an application dated 2<sup>nd</sup> April 2019 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with its application copies of the short assured tenancy agreement, form AT5, notice to quit, section 19 notice (form AT6), section 11 notice, bank statements and execution of service.

The tenancy agreement and form AT5 had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

A Case Management Discussion was held on 16<sup>th</sup> July 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Ms Lavelle and Ms Doris, property agents. The Respondent did not appear, nor was she represented.

The Respondent had lodged representations by e-mail dated 24<sup>th</sup> June 2019. The Respondent in those complained of various alleged defects with the Property, but more seriously, alleged that her signature had been forged on the lease agreement.

The Tribunal continued the Case Management Discussion to allow the Respondent to attend in person, and or for appropriate representation at a further Case Management Discussion.

### **Continued Case Management Discussion**

A continued Case Management Discussion was held on 6<sup>th</sup> August 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was again represented by Ms Lavelle and Ms Doris, property agents. The Respondent again did not appear, nor was she represented.

The Respondent had lodged further representations by e-mail dated 5<sup>th</sup> August 2019. The Respondent in those complained that she had moved out of the Property some time before, and repeated her allegation that her signature had been forged on the lease agreement. She also indicated that she would not be attending the continued Case Management Discussion.

The Tribunal noted that although a notice to quit had been served, one was not in fact required in circumstances where the lease agreement referred to and incorporated in full the provisions contained in Schedule 5 to the *Housing (Scotland) Act 1988*.

The Tribunal also noted that the form AT6 is dated 29<sup>th</sup> August 2018. By way of explanation, the Applicant originally brought an application to the Tribunal dated 4<sup>th</sup> February 2019 purportedly in terms of Rule 66 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Tribunal queried whether the Applicant intended to bring this application under Rule 66, when the Applicant had provided no section 33 notice, had supplied a section 19 notice, and stated that it relied upon grounds 8, 11, 12 and 13 of Schedule 5 to the *Housing (Scotland) Act 1988*.

The Applicant responded by lodging a fresh application dated 2<sup>nd</sup> April 2019, in terms of Rule 65 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, as earlier narrated.

Part 2 of the form AT6 repeats the full wording of grounds 8, 11, 12 and 13 of Schedule 5 to the *Housing (Scotland) Act 1988* and indicates that these are the grounds upon which the Applicant relies.

However, Part 3 of the form AT6, which should specify the reasons for seeking possession on the grounds set out in Part 2, simply narrates "The tenancy is a Short Assured Tenancy. The tenancy has expired". It fails to state the circumstances that the Applicant relies on as establishing the grounds for seeking possession which are set out in Part 2.

### **Statement of Reasons**

Sections 19(1), (2), (3) and (7) of the *Housing (Scotland) Act 1988* as amended provide:

"19.— Notice of proceedings for possession.

(1) The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—

- (a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or
- (b) the Tribunal considers it reasonable to dispense with the requirement of such a notice.

(2) The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.

(3) A notice under this section is one in the prescribed form informing the tenant that—

- (a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and
- (b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.

(7) A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised."

In *Rennie & Ors – Leases (1<sup>st</sup> Ed.)* at para 22-52, the authors state in relation to the content of a form AT6:

"It is not sufficient merely to refer to the Ground in question, or to incorporate the text of the Ground in the notice. The landlord must also specify "particulars" of the Ground(s) stated in the notice. In other words the landlord should state the circumstances that the landlord relies on as establishing the Ground, e.g. if possession were sought on Ground 13, the notice should specify which obligation of the tenancy has been breached and by what action/inaction of the tenant."

The Tribunal considered that the form AT6 is invalid, upon the basis that it fails in Part 3 to state the circumstances that the Applicant relies on as establishing the grounds for seeking possession which are set out in Part 2.

The Tribunal would note that it does have the power to dispense with the need for the notice of proceedings for possession (form AT6) if it considers it reasonable to do so. However, given the purposes of the notice of proceedings, the requirement to serve one ought not to be dispensed with lightly (see *Rennie & Ors – Leases* (1<sup>st</sup> Ed.) at para 22-53).

Standing the importance of the notice of proceedings in giving notice to the tenant, the Tribunal does not consider in these circumstances that it is reasonable to dispense with the need for the notice.

Finally, the Tribunal notes that although the form AT6 narrates that proceedings will not be raised before 5<sup>th</sup> November 2018 (which is the earliest date at which proceedings can be raised under Section 19 of the *Housing (Scotland) Act 1988*), the grounds relied upon in the notice only require two weeks' notice to be given.

That being so, it is arguably the case that the form AT6 ceased to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised i.e. two weeks after the date (3<sup>rd</sup> September 2018) the form AT6 was served on the Respondent by sheriff officers. That date is 17<sup>th</sup> September 2018, which is more than 6 months before this application was lodged with the Tribunal.

## Decision

For the above reasons, the Tribunal dismissed 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.**

N Kinnear

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Legal Member/Chair

06/08/19  
\_\_\_\_\_  
Date