



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 97(1) of the Antisocial Behaviour (Scotland) Act 200

Chamber Ref: FTS/HPC/PR/19/0888

Re: Property at 31 Mosscastle Road, Glasgow, G33 5PY (“the Property”)

Parties:

Mr Dale Hughes, 59 Braid Road, Edinburgh, EH10 6AR (“the Applicant”)

Glasgow City Council, Private Sector Housing Team, 231 George Street, Glasgow, G1 1RX (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

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

Background

1. By Application dated 15 March 2019 the Applicant made an application to the Tribunal for an appeal under Section 97 of the Antisocial Behaviour (Scotland) Act 2004 against the issue of a Rent Penalty Notice by the Respondent in respect of the property dated 30 November 2018. The Applicant submitted a copy of the Notice to the tenant of the property, the rent penalty notice and copies of correspondence with the Respondent in support of the application.
2. By Notice of Acceptance dated 17 April 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.
3. A Case Management Discussion was held at Glasgow on 10 July 2019 at which it was determined that a full hearing of the Tribunal should be assigned.

4. Hearings assigned for 30 August 2019 and 31 October 2019 were postponed due to the non-availability of the Applicant and a further hearing assigned to take place on 27 January 2020.
5. The Respondent submitted written submissions, Inventory of Productions and a list of Witnesses by letter dated 20 August 2019.

The Hearing

6. A hearing was held at Glasgow Tribunals Centre on 27 January 2020. The Applicant attended personally and the Respondent was represented by Mr Kenneth MacDonald, Solicitor.
7. By way of preliminary matters the Tribunal confirmed that Mr MacDonald had no objection to Mr Hughes leading evidence from his witness Ms Jillian McLaughlin although no List of Witnesses had been submitted by him. Mr Macdonald confirmed this to be the case.
8. There then followed some discussion with regards to certain allegations that had been made it appeared with regards to Mr Hughes behaviour by the Respondent however Mr MacDonald sought to assure Mr Hughes that no such inference was intended against Mr Hughes and apologised on behalf of the Respondent.
9. The Tribunal then considered the issue as to whether the Rent Penalty Notice ("RPN") had been served on the Applicant. After some discussion the accepted position was that the Respondent could show that the RPN addressed to the Applicant had been sent to the Respondent's mail room for posting by second class post but it was not possible to produce a certificate of posting in terms of Section 193(3) of the Local Government (Scotland) Act 1973. The respondent therefore could not say the RPN had been served and it was the Applicant's stated position that he had never received it.
10. The Tribunal then considered the parties submissions with regards to the impact non delivery of the RPN on the Applicant might be. It was the Applicant's position that if he was not served with the RPN as a co-owner of the property it defeated the whole purpose of the intention of the statute and would render it meaningless. He explained that if he had received the notice he would have contacted the co-owner Mr Berlow and ensured that he took immediate steps to renew his landlord registration. By not being given intimation he was deprived of that fundamental right. The Applicant went on to say that in terms of Article 6 of the Convention on Human rights he had a right to a fair hearing and to be given fair notice and by not receiving intimation he had been deprived of that right. The existence of the RPN had only come to light when he had been advised by his letting agent that the tenant of the property had told them that she was not to pay rent. The Applicant said he had then taken steps to establish what had happened by communicating with the Respondents all as detailed in the application.

11. The Applicant pointed out that the tenant had been in receipt of Housing Benefit that was administered by the Respondent. If the appeal was allowed the Tenant would be liable to pay the rent for the period the notice was in place. The Applicant was of the view that this could be dealt with administratively by the Respondent.
12. For the Respondent, Mr MacDonald submitted that the relevant person as far as Section 94 of the 2004 Act was concerned was the Applicant's co-owner Mr Berlow. He was the person who had failed to renew his landlord's registration despite warnings being given to him by the Respondent. Mr Berlow had been served with an RPN. He had not sought to appeal and therefore it had to be assumed there was a valid RPN in place in respect of him. Mr MacDonald submitted that as Mr Berlow had not appealed the RPN the Tribunal could not recall the Notice as it applied to him. Recalling a notice insofar as it applies to one joint owner only is not possible.
13. Mr MacDonald accepted that the Applicant had been registered throughout. He was a relevant person in terms of the 2004 Act as an owner of the property but an interested person in terms of Section 94 of the Act and not a relevant person in terms of Section 93.
14. Mr Macdonald felt that what the Applicant had said about being able to have persuaded Mr Berlow to renew his registration sooner had he known about the RPN was entirely speculative. He also said he was unable to comment on the Housing benefit position should the Applicant's appeal be successful.
15. The Tribunal queried the terms of Section 93 and the issue of who was intended to be a relevant person in that section with the applicant who remained of the view that even although he was registered he remained a relevant person as otherwise he was being deprived of his rights and that could not have been the purpose of the legislation.
16. The Tribunal queried with the Applicant if his dispute was rather with Mr Berlow than with the Respondent and that a remedy might lie against him. The Applicant accepted that he had not been pleased with Mr Berlow but maintained his position. The Applicant described his relationship with Mr. Berlow as that of a "loose business associate".
17. As the factual position with regards to the mailing of the RPN was accepted it was a matter of agreement that there was no need to hear evidence from either party's witnesses.

Findings in Fact

18. The respondent served a RPN on Mr Matthew Berlow that was not challenged or appealed by him.

19. The RPN was in place for the period from 21 December 2018 until it was revoked on 12 February 2019 after Mr Berlow renewed his registration as a landlord.
20. A RPN was sent by the Respondent to the Applicant by second Class post on 30 November 2018 to the Applicant but not received by him.
21. The Applicant became aware of the existence of the RPN as a result of the tenant of the property not paying rent.
22. The applicant was at all times a registered landlord of the property.

Reasons for the Decision

23. The Applicant was in the Tribunals view not a relevant person in terms of Section 94(2)(c) of the 2004 Act as he was registered. It was the Applicant's co-owner that was not registered and therefore liable to have a RPN served upon him. It was the Respondent's practice to intimate an RPN to co-owners and that is what they attempted to do. For some reason the Applicant did not receive the notice. There was no obligation to send the notice by recorded delivery post as Section 192 of the Local Government (Scotland) Act 1973 would apply.
24. Irrespective of any action ultimately taken by the Applicant there was and remained a valid RPN affecting the property that had been served on the co-owner Mr Berlow. Mr Berlow took no steps to appeal that notice. He did ultimately seek to renew his registration and on doing so the RPN was revoked.
25. Even if the Tribunal were to uphold the Applicants appeal that would still leave the RPN as it applied to Mr Berlow in place. They are not divisible and the tenant would still not be liable to pay rent for the period the RPN was in place.
26. The Tribunal found the wording of the legislation unfortunate but was of the view that both owners would have needed to have sought to have appealed the Respondent's decision to issue the RPN to have had any prospect of success and there was no dispute that at the time it was issued Mr Berlow had failed to renew his landlord registration.
27. The tribunal therefore refused the application.

Decision

28. The tribunal having carefully considered the oral and written submissions made on behalf of both parties refuses 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.

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Date *27 January 2020*

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