



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 14 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/TE/19/4016

Re: Property at Allanaha Cottage, Cawdor Road, Nairn, IV12 5QU (“the Property”)

Parties:

Miss Violet Jane Mackay, Allanaha Cottage, Cawdor Road, Nairn, IV12 5QU (“the Applicant”)

Mrs Margaret Lyle, Wester Delnies Farmhouse, Ardersier Road, Nairn (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

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

Background

This is an application dated 25th December 2019 brought in terms of Rule 105 (Application to draw up terms of tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The application is made in terms of section 14 of the *Private Housing (Tenancies) (Scotland) Act 2016* (“the 2016 Act”).

The Applicant states that there is “No clarity as to exact nature of tenancy and conflicting dates on second tenancy agreement”. She asserts that there was a first tenancy agreement provided on occupation at 20th June 2016 which “was not official”, and a subsequent lease agreement of 8th November 2018.

The Applicant provided with her application copies of an undated informal tenancy agreement, a subsequent formal tenancy agreement, rent books with deposit receipt and various other documents.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal, and a Case Management Discussion was set for 19th March 2020.

That Case Management Discussion had to be cancelled as a result of the coronavirus pandemic, and the lockdown imposed in the United Kingdom as a consequence thereof. The Parties' representatives were subsequently notified with the details of a Tele-Conference and provided with dial-in details.

A Case Management Discussion was held at 10.00 on 9th July 2020 by Tele-Conference. The Applicant did not participate, and nor did her representative, Ms Pierce of Nairn Citizens Advice Bureau. The Respondent participated, and was represented by Mr Swarbrick, solicitor.

The Tribunal made enquiries with Nairn Citizens Advice Bureau when Ms Pierce did not dial-in. The receptionist advised that Ms Pierce was engaged in another matter, but that an attempt would be made to let her know about the Tele-Conference Case Management Discussion. By 10.30, the Tribunal commenced the Case Management Discussion in Ms Pierce's absence, after giving her a reasonable period in which to participate.

The Tribunal explained the position to the Respondent and Mr Swarbrick. Mr Swarbrick was anxious that matters be dealt with in order to resolve the issues in this application, but he fairly accepted that in light of the ongoing difficulties caused by the coronavirus pandemic to ordinary business administration, it might be unfair not to allow Ms Pierce and the Applicant one further opportunity to participate.

Mr Swarbrick helpfully confirmed that the Respondent's position is that there was a short assured tenancy agreement entered into in June 2016, as evidenced by the undated informal letter lodged by the Applicant. Subsequently, that agreement was reduced to writing in the later lease agreement of 8th November 2018, which document narrates a date of commencement of 20th June 2016.

Mr Swarbrick advised the Tribunal that no copy of any form AT5 can be located, and as a result, the lease agreement should be characterised legally as an assured tenancy agreement in terms of the *Housing (Scotland) Act 1988*.

That being so, he argued that this application is inappropriate, as it relates to private residential tenancies in terms of the 2016 Act.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on its own initiative to adjourn a hearing.

The Tribunal decided that it was in the interests of justice to continue this application for one further occasion to allow the Applicant and/or her representative to participate. It did so with reluctance, but in light of the business and administrative difficulties faced by many as a result of the coronavirus pandemic, concluded that it was appropriate to do so.

The Case Management Discussion note of 9th July 2020 specifically stated that the Applicant should be aware that if she or someone on her behalf did not participate at the continued Case Management Discussion, then the Tribunal might dismiss this application.

In these circumstances, the Tribunal set a continued Case Management Discussion to be conducted by Tele-Conference in this application, at a date and time to be confirmed to the Parties' representatives by the Tribunal in writing.

By e-mail to the Tribunal of 30th July 2020, Ms Pierce indicated that the Applicant would dial in and represent herself at the continued Case Management Discussion set for 21st August 2020, and that she was forwarding the details to the Respondent that day.

The Continued Case Management Discussion

A continued Case Management Discussion was held at 10.00 on 21st August 2020 by Tele-Conference. The Applicant did not participate, and nor did her representative, Ms Pierce of Nairn Citizens Advice Bureau. The Respondent participated, and was represented by Mr Swarbrick, solicitor.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Mr Swarbrick confirmed that his position remained that there was a short assured tenancy agreement entered into in June 2016, as evidenced by the undated informal letter lodged by the Applicant. Subsequently, that agreement was reduced to writing in the later lease agreement of 8th November 2018, which document narrates a date of commencement of 20th June 2016.

In the absence of a copy of any form AT5, the lease agreement should be characterised legally as an assured tenancy agreement in terms of the *Housing (Scotland) Act 1988*.

That being so, he argued that this application is inappropriate, as it relates to private residential tenancies in terms of the 2016 Act. The lease here is an assured tenancy under the *Housing (Scotland) Act 1988*.

Reasons for Decision

Rule 105 (Application to draw up terms of tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended concerns applications made in terms of section 14 of the 2016 Act.

Section 14 of the 2016 Act provides that the tenant under a private residential tenancy may apply to the Tribunal asking it to draw up the terms of the tenancy. The 2016 Act applies to residential tenancies commencing from 1st December 2017.

This tenancy commenced in June 2016. The Applicant accepts that, but states that it “was not official”, and was followed by another of 8th November 2018.

What the Applicant appears to be referring to is the subsequent written lease agreement of 8th November 2018. However, it is clear from the terms of that written agreement that it simply reduces to writing the existing informal and unwritten agreement, as is clearly demonstrated by its narration of a date of commencement of 20th June 2016 and its reference to the agreement being one under the *Housing (Scotland) Act 1988*.

The Applicant appears to be labouring under a misapprehension that unwritten tenancy agreements are not legally valid, and therefore that there was no valid tenancy agreement until the written agreement of 8th November 2018.

If that is so, then she is incorrect. A tenancy may be created without writing if the essential legal elements required are present (which they appear to be here). The subsequent written agreement appears to simply reduce the terms of the existing lease to writing.

That being so, this application is not competent, and must be dismissed.

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.

21st August 2020

Legal Member/Chair

Date