



**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 (“The Act”)**

**Chamber Ref: FTS/HPC/EV/23/3378**

**Re: Property at 44 Keppenburn Avenue, Fairlie, KA29 0BA (“the Property”)**

**Parties:**

**Mrs Johann MacDougall, 81 Alexander Ave, Largs, KA30 9EX (“the Applicant”)**

**Miss Lynn Mennie, 44 Keppenburn Avenue, Fairlie, KA29 0BA (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Gerard Darroch (Ordinary Member)**

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

**[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the Application.**

**Background**

[2] The Application seeks an Eviction Order and is accompanied by a Notice to Quit, a Form AT6, the relevant notice under s11 of the Homelessness (etc) (Scotland) Act 2003. The Respondent has also submitted representations prepared by a representative which set out the Respondent’s health issues and object to the competency of an attempt by the Applicant to increase the rent payable under the tenancy.

**The Case Management Discussion**

[3] The Application called for a Case Management Discussion (CMD) by conference call at 2 pm on 5 March 2024. The Applicant was personally present. There was no

appearance by or on behalf of the Respondent despite the representations which had been submitted on her behalf by her representative. The Respondent had received competent notification of the CMD and so the Tribunal decided to proceed in the absence of the Respondent.

### **Preliminary matters**

[4] The Applicant did not have any preliminary matters to raise. The Tribunal did however have preliminary matters to raise regarding the competency of the Application. These had been raised in advance with the Applicant who had been put on notice that these issues would be considered at the CMD as preliminary matters.

[5] The Applicant had indicated that she now wished to proceed with the Application on the basis that she wanted to "*sell the house*" - although no precise ground in terms of Schedule 5 of the Act was ever actually identified. The Applicant indicated that she no longer wished to proceed on the basis of grounds 8A, 11, 12, and 14. These were the grounds narrated in the Form AT6 served and also in the Application submitted to the Tribunal.

[6] It appeared that these grounds were now abandoned because of a recognition that they were premised on the Applicant having attempted to increase the Respondent's rent by substantially more than the permitted rate within the meaning of the Cost of Living (Tenant Protection) (Scotland) Act 2022 (although the Applicant also wished to abandon ground 14 which does not relate to rent arrears). The rent account would have been up to date had the rent increase not been imposed. It appeared the Respondent had challenged the rent increase and continued to pay rent at the previous rate.

[7] The Applicant however also suggested, that her tenancy, as a short assured tenancy, was exempt from the "rent cap" provisions of the Cost of Living (Tenant Protection) (Scotland) Act 2022. However that was simply not the case by virtue of Section 2 of Schedule 1 of the aforesaid Act which provides that short assured and assured tenancies are included with the ambit of the rent cap with minor exceptions which appeared non-applicable to the Applicant's situation.

[8] No ground relating to selling the house had been founded upon either in the Form AT6 served nor in the Application itself.

[9] The Form AT6 served had also not provided the Respondent with the requisite notice period as the inclusion of Ground 8A meant that a notice period of two months notice ought to have been given. The Applicant had instead given from 30 August 2023 until 20 September 2023 which failed to provide the requisite notice. The Applicant appeared confused and appeared to think she had given more notice than was necessary. There was also a notice served on the Respondent under Section 33 of the Act which was not

further mentioned in the Application. The whole Application seemed confused and jumbled.

[10] Section 19 of the Act is in the following terms

*Notice of proceedings for possession.*

(1)The **[F1First-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)**[F2the Tribunal]** considers it reasonable to dispense with the requirement of such a notice.

(2)The **[F3First-tier Tribunal]** shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground **[F4and 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 **[F3Tribunal]**.

(3)A notice under this section is one **[F5in 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.

(4)The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—

(a)two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and

(b)in any other case, two weeks.

**[F6(5).** . . . . .

(6)Where a notice under this section relating to a contractual tenancy—

(a)is served during the tenancy; or

(b)is served after the tenancy has been terminated but relates(in whole or in part) to events occurring during the tenancy,

the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.

*(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.*

## **Decision**

[11] The Tribunal decided not to entertain the proceedings as the ground now supposedly relied on (whichever ground that actually was) was not specified in the Form AT6.

[12] The Tribunal could not consider it reasonable to add such a ground as it had not even been mentioned in the Application and therefore the Respondent would have had no notice of it whatsoever. In any event, the timescales provided in the Form AT6 that was served was also deficient. The Tribunal decided that the Application was sufficiently jumbled that it ought simply to be refused.

## **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.**

**Andrew McLaughlin**

**Legal Member/Chair**

**5 March 2024**

**Date**