



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 52 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/19/1528

Re: Property at 61 Balfroon Drive, Carnbroe, Coatbridge, ML5 4FF (“the Property”)

Parties:

Ms Pauline Anderson, Coven Gate, 2 Brewood Road, Coven, WV9 5BD (“the Applicant”)

Ms Lynn McKenzie, 61 Balfroon Drive, Carnbroe, Coatbridge, ML5 4FF (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member)

Decision

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

- Background

This is an application for an eviction order in relation to the Respondent’s private residential tenancy at the Property. It called for a case management discussion at 10am on 9 August 2019. The Applicant was not present in person, but was represented by Ms Franchitti of Property Angels letting agents. The Respondent was present and was also represented by Ms Heron of Browns Solicitors.

- Findings in Fact

1. The Respondent occupies the Property in terms of a private residential tenancy that commenced on 19 October 2018. On 4 April 2019, the Applicant’s agents sent a notice, purporting to be a ‘notice to leave’ to the Respondent. Among other things, that notice stated: “An application will not be submitted to the Tribunal for an eviction order before 4 May 2019.”

- Reasons for Decision

2. The Private Housing (Tenancies) (Scotland) Act 2016 governs private residential tenancies. Section 52 applies to the Tribunal's consideration of an application for an eviction order and reads:

“ 52 Applications for eviction orders and consideration of them

...

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3),

...

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.”

3. A 'notice to leave' is defined in s.62, as follows:

“ 62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

...

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.”

4. It would therefore appear that, in order to qualify as a ‘notice to leave’ a notice must comply with the terms of this section. In order to do so, it must (among other things) specify the day indicated in subsection (4) (by dint of subsection (1)(b)). Statement of any other day as, “the day the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,” would therefore render a notice ineffective as a ‘notice to leave.’

5. The notice period referred to in s.62(4) is that defined in s.54(2), as follows:

“ 54 Restriction on applying during the notice period

...

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) 84 days after it begins if subsection (3) does not apply.

(3) This subsection applies if—

(a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months...”.

6. In this case, the notice that accompanied the application was sent on 4 April 2019. It is therefore assumed to have been received by the tenant on 6 April 2019 (s.62(5)). Section 54(3) applies, since the tenant had not been entitled to occupy the Property for more than six months on that day. The relevant period therefore expires 28 days after 6 April 2019, on 4 May 2019. According to s.62(4), the day to be specified in terms of s.64(1)(b) is therefore 5 May 2019.

7. As the notice accompanying this application does not specify that day, the notice is not a ‘notice to leave’. The Tribunal may not entertain an application that is not accompanied by a notice to leave, in terms of s.52(2). This application must therefore be refused.

8. It is worth noting that s.73 of the Act states:

“73 Minor errors in documents

(1) An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.

(2) This section applies to—

...

(d) a notice to leave (as defined by section 62(1)).”

9. The Tribunal observes that this section applies only to, “a notice to leave (as defined by section 62(1)).” As has already been noted, the notice in this case does not meet that definition.
10. There are many other types of error that may be made in completing a notice to leave, aside from errors in regard to the defining characteristics laid out in s.62. For example, an error may be made in stating the particulars of how the landlord believes that the grounds relied upon have arisen. Section 73 makes clear that such an error does not have to be fatal to the validity of the notice to leave, provided it does not materially affect its effect.
11. However, if Parliament had intended that discretion to extend to errors in the defining characteristics of the notice to leave, it would not have included the words, “as defined in section 62(1),” when indicating to which documents s.73 may be applied. For these reasons, the Tribunal considers that s.73 is not applicable in this case.

- Decision

Application 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.

Nairn Young

Legal Member/Chair

9 AUGUST 2019

Date

*Insert or Delete as required