

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/EV/18/1394

Re: Property at 14/5 Primrose Street, Edinburgh, EH6 8DJ (“the Property”)

Parties:

Simple Property, Simple Property, 1 Long Craig Rigg, Edinburgh, EH5 1QT (“the Applicant”)

Mr Andrew Brown, Ms Cheryl Wilson, 14/5 Primrose Street, Edinburgh, EH6 8DJ (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member), Carolyn Hirst (Ordinary Member) and Elizabeth Dickson (Ordinary Member [Reviewer])

Decision (in absence of the Respondent)

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

This matter called for a Hearing at 2pm on 16 January 2019 in George House, 126 George Street, Edinburgh.

Mr Gary Bennett appeared and confirmed that he was the Applicant and that Simple Property was a trading style of his. There was no appearance by or on behalf of the Respondents. This matter called alongside a related Application for a Payment Order.

In this matter the Applicant invited the Tribunal to make an Eviction Order.

The Tribunal noted that the Application proceeded on the basis of s19 of the Housing (Scotland) Act 1988. It was submitted that Grounds 8 of Schedule 5 of the Housing (Scotland) Act 1988 was engaged. It was submitted that both Respondents were in three months of rent arrears both at the dates of service of Forms AT6 and also at today’s Hearing.

The Tribunal noted that a Notice to Quit and a Form AT6 had been served on Cheryl Wilson on 7 June 2018. The Notice to Quit and Form AT6 appeared valid and properly completed.

The Application was then lodged by the Applicant with the Tribunal against Ms Cheryl Wilson only on an undated Application that was not accepted by the Tribunal on account of it not being signed. It appears that the Applicant then wished the Application to proceed against both Respondents and signed and lodged an amended Application on 24 July 2018.

In support of this amended Application the Applicant then elected to serve a Notice to Quit and a Form AT6 on Andrew Brown on 16 August 2018. The AT6 that was served on Andrew Brown stated that proceedings would not be raised against him in respect of the matters raised in the AT6 until not before 30 August 2018.

The reality of the matter was though that proceedings had in fact already been raised against Mr Brown when the Application was lodged with the Tribunal on 24 July 2018.

The AT6 that was served on Mr Brown was therefore inaccurate and misleading. It stated that Mr Brown had until 30 August 2018 to avoid proceedings being raised against him. In reality though, proceedings had already been raised for his eviction. The AT6 was therefore not meaningful and did not comply with the terms of s19 of the Housing Act (Scotland) 1988 which makes it clear that an AT6 must notify the tenant of the date before which proceedings for eviction will not be raised.

The Applicant accepted that the AT6 served on Mr Brown did not therefore meet the requirements of s19 of the Act.

On the basis that s19 of the Housing (Scotland) Act 1988 had therefore not been complied with, the Tribunal refused 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.

Andrew McLaughlin

Lega

Date

16/1/19