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 33 of the Housing (Scotland) Act 1988 (Act)

Chamber Ref: FTS/HPC/EV/19/1796

Re: Property at 145 Findhorn, Forres, Morayshire, IV36 3YL ("the Property")

Parties:

Mrs Pamela Burnett, Im Hagen 47, 14532 Kleinmachnow, Germany ("the Applicant")

Ms Orla Broderick, 145 Findhorn, Forres, Morayshire, IV36 3YL ("the Respondent")

Tribunal Members:

Alan Strain (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the order for eviction and recovery of possession be granted.

Background

This is an application under section 33 of the Act and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (**Regulations**) in respect of the termination of a Short Assured Tenancy (**SAT**).

The Tribunal had regard to the following documents:

1. Application received 7 June 2019;
2. AT5 dated 4 November 2015;
3. SAT commencing 1 December 2015;
4. Section 33 Notice dated 29 March 2019;
5. Notice to Quit dated 29 March 2019;
6. Section 11 Notice to local authority;

7. Royal Mail Track and Trace confirming posting of Section 33 and Notice to Quit on 29 March 2019;
8. Case Management Discussion (**CMD**) Note dated 26 September 2019;
9. Written Submissions from Respondent's representative dated 26 September 2019;
10. Notice of Direction dated 26 September 2019;
11. Written Submissions from the Applicant's agents dated 15 October 2019;
12. Written Submissions from the Respondent's agents dated 16 October 2019.

The previous CMD had been continued to enable both Parties to provide written submissions on the Respondent's argument that the Notice to Quit was invalid in that it did "*not contain the prescribed information required in terms of The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 (as amended by the First Tier Tribunal for Scotland Housing and Property Chamber (incidental provisions) Regulations 2019.*

SCHEDULE

INFORMATION TO BE CONTAINED IN THE NOTICE TO QUIT

Regulation 2

Law in Force

1.

Even after the Notice to Quit has run out, before the tenant can lawfully be evicted, the landlord must get an order for possession from [the First-tier Tribunal for Scotland Housing and Property Chamber] [1].

Notes

1 Word substituted by First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 51 (Scottish SI) reg 3(2) (March 6, 2019)

The Notice to Quit issued by the Landlord's solicitors by letter of 29 March 2019 refers to an order for possession from 'the court'. This is incompatible with the above regulations. Since December 2017, eviction cases of this type have been dealt with by the Tribunal rather than the Sheriff Court. The 2019 Regulations came into force on 6 March 2019 and brought the prescribed wording into line with current procedure. A Notice to Quit issued some 23 days later ought to have advised the tenant that the landlord must get an order for possession from "the First-tier Tribunal for Scotland Housing and Property Chamber".

It is submitted that the Pursuer's failure to include the prescribed information renders the Notice to Quit invalid in terms of section 112 of the Rent (Scotland) Act 1984:

112 Minimum length of notice to quit.

(1) No notice by a landlord or a tenant to quit any premises let (whether before or after the commencement of this Act) as a dwelling-house shall be valid unless it is in writing and contains such information as may be prescribed and is given not less than four weeks before the date on which it is to take effect.

(2) In this section "prescribed" means prescribed by regulations made by the Secretary of State by statutory instrument, and a statutory instrument containing any such reegulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Regulations under this section may make different provision in relation to different descriptions of lettings and different circumstances.

No valid Notice to Quit having been served, the tenancy has not been terminated and the Tribunal are not permitted to make an order for possession in terms of section 33 of the Housing (Scotland) Act 1988. The application should be dismissed. "

The Applicant's agent's response was in the following terms:

"It is our position that the point of objection raised by the Respondent's representatives in this case is essentially de minimis. We refer to the book "Evictions in Scotland" by Adrian Stalker (1st Edition), in particular pages 45 & 46 insofar as they relate to a Notice to Quit containing an error. Particular reference is made to the English case of Mannai Investment Company Limited -v- Eagle Star Life Assurance Company Limited in which the House of Lords decided by majority that the construction of Notices had to be approached objectively, and the question was how a reasonable recipient would have understood them, bearing in mind their context. Lord Clyde in particular is quoted as saying that "The standard of reference is that of the reasonable man exercising his common sense in the context and in the circumstances of the particular case. It is not an absolute clarity of an absolute absence of any possible ambiguity which is desiderated. While careless drafting is certainly to be discouraged the evident intention of a Notice should not in matters of this kind be rejected in preference for a technical precision".

This case and others quoted on the same page deal with Notices which had an erroneous date. In the present case reference is made to a decree of court as opposed to a finding of the First Tier Tribunal for Scotland. It is our submission that what the Tribunal has to consider is the purpose of the Notice, and in particular the purpose of the offending paragraph. What that particular passage/ passage of any Notice to Quit is designed to do is to explain to the tenant that they need not quit the property automatically upon expiry of the period of notice, rather they could await the order which may follow thereon in the event that the landlord applied for an order to the appropriate court or in this case Tribunal. In the circumstances we would submit that no confusion should have been entered into the mind of the tenant by the use of one word in this Notice to Quit.

While it is conceded that the general thrust of the author's section on errors appearing in Notices is that Scottish Courts have tended towards a more exact rigour in dealing with the wording of Notices, it is submitted by the author on page 46 of his book that the decision in Mannai is applicable in Scotland "especially in cases where the date specified in the Notice is one day out, or where the intended meaning of the Notice is unambiguous." It is our submission that the basic meaning of the Notice is in the present case unambiguous."

Case Management Discussion (CMD)

The case called for a further CMD on 19 November 2019. The Applicant was not present but was represented b y her solicitor, Mr Adams. The Respondent was not present and her representatives had advised the Tribunal that they would not be attending.

Neither Party disputed that the elements of section 33 were satisfied. What was disputed was the validity of the Notice to Quit in light of the use of the words "*the court*" rather than "*the First Tier Tribunal for Scotland Housing and Property Chamber*". The argument is a narrow, technical one.

The Tribunal took time to consider its Decision and carefully considered the submissions by both Parties.

Decision and Reasons

The First-tier Tribunal acquired jurisdiction to hear section 33 cases with effect from 1 December 2017. The Prescribed Information was not changed until 6 March 2019 when it was amended by The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 (as amended by the First Tier Tribunal for Scotland Housing and Property Chamber (incidental provisions) Regulations 2019).

Accordingly, actions for eviction and recovery of possession before 6 March had to contain the prescribed information which predated the amendment and included the words "the court" even although the courts no longer had jurisdiction to hear such matters. The Tribunal continues to see on a frequent basis reference to the court in Notices to Quit despite the amendment.

The Tribunal considered that the meaning of the Notice to Quit was clear. It could not have been the case (nor did it appear to be suggested) that the Respondent was in any way misled because of the erroneous reference in the Notice to Quit to the court rather than the Tribunal. In fact, the Respondent in this case had been legally represented and proceedings had been raised in the correct forum.

Whilst the case of ***Mannai*** referred to by the Applicant involved commercial rather than residential leases it was illustrative of a common sense approach, namely, how would a reasonable recipient have understood the Notice. The Tribunal had no doubt that the Respondent clearly understood the Notice to Quit and what it meant. She also had the benefit of legal advice. The Tribunal considered that the use of the words "*the court*" as against "*the First-tier Tribunal*" was a simple and understandable error on the Applicant's behalf which had no material bearing on the validity of the Notice to Quit. It was *de minimis.*

The Tribunal accordingly were satisfied and found the following:

1. The Parties entered in to an SAT commencing 1 December 2015;
2. The SAT had reached its ish;
3. Tacit relocation was not operating;
4. No further contractual tenancy was in existence;

5. The Applicant had given the Respondent notice that she required possession.

The Tribunal found that the Notice to Quit was valid and that the ordr for eviction and recovery of possession should be granted.

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.

Alan Strain

Legal Member/Chair

2 December 2019

Date