



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 18 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/EV/18/2083

**Re: Property at Flat 1 White Gables, 116 St Andrews Drive, Glasgow, G41 4RB
("the Property")**

Parties:

**Mr Andrew Adams, Mrs Jean Adams, 94 Beeches, Lochgelly, Fife, KY5 9QB; 94
The Beeches, Lochgelly, Fife, KY5 9QB ("the Applicant")**

**Mr Zahid Shafi, Flat 1 White Gables, 116 St Andrews Drive, Glasgow, G41 4RB
("the Respondent")**

Tribunal Members:

Alison Kelly (Legal Member) and David MacIver (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the application should be dismissed.**

Background

The Applicant's agent submitted an application seeking an order to evict the Respondent from the property at Flat 1, White Gables, 116 St Andrews Drive, Glasgow, G41 4RB.

Lodged with the Application were:

1. Copy Tenancy Agreement
2. AT5
3. Notice to Quit dated 29th January 2018
4. Section 33 Notice dated 29th January 2018
5. Recorded Delivery slip
6. Print of the Signature from Royal Mail Track and Trace
7. Notice To Quit dated 13th April 2018

8. Section 33 Notice dated 13th April 2018
9. Section 11 Notice

Hearing

The hearing took place as scheduled. The Applicants were represented by Javaid Haq and Isabella Brisbane of Martin & Co, Letting Agents. The Respondent did not appear and was not represented.

Mr Haq asked that the eviction order be granted in terms of the documentation lodged. Mr Haq said that when he went to the property on 12th April 2018 for the checkout. The Respondent said he had not received the notices even although the recorded delivery service had been effective. The Respondent asked for the period to be extended as it was during Ramadan and he would not be able to seek another property quickly. In an effort to be helpful Mr Haq, after taking instructions from the Applicants, undertook to give a further two months notice and returned the next day to hand serve a further Notice To Quit and section 33 Notice.

Mr Haq acknowledged that he had delivered the Notice To Quit by hand. He said he received an email from the Respondent confirming that it had been received.

The Chairperson pointed out that the Notices should have been served by recorded delivery post or by Sheriff Officer. Mr Haq said that he had been a letting agent for around 18 years and he had always understood that hand delivery in front of a witness had been sufficient. He said that until the Tribunal came in to being it had never been an issue.

The Tribunal adjourned for a short time to consider the position.

Findings In Fact

1. The Applicants and Respondent entered in to a tenancy agreement dates 12th August 2015 for the property.
2. The Applicants' Agent, Mr Haq, served Notice to Quit and section 33 Notice by recorded delivery post on 29th January 2018.
3. Said notices were correct and correctly served.
4. Mr Haq, on behalf of the Applicants, agreed on 12th April 2018 to give the Respondent another two months, and to serve fresh notices.
5. Fresh Notice to Quit and Section 33 Notice were delivered personally by Mr Haq to the property on 13th April 2018.
6. Service of the Notice To Quit and Section 33 Notice on 13th April 2018 had not been done by a valid method of service, and therefor were invalid.
7. The Tenancy remained in force as a contractual tenancy for the time being.

Reasons For Decision

The Tribunal considered that there was a fundamental flaw in the service of the second Notice To Quit and section 33 Notice, in that they had not been served by Recorded Delivery or Sheriff Officer, but had been hand delivered.

The Tribunal noted the case of Govan Housing Association –v- Thomas Kane (A763/01), which noted that service in the correct manner was fundamental to the validity of a Notice To Quit. Without valid service the action must fail.

Prior to the transfer of the jurisdictions from the Sheriff Court to the Tribunal, in this particular case service ought to have been effected in accordance with the Sheriff Court Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993. In brief summary, this specifies that first an attempt must be done by recorder delivery which, if unsuccessful should then be done by Sheriff Officer. It appeared to the Tribunal that it would be appropriate for it to be bound by the same standard of service as the Sheriff Court.

A Notice To Quit was a fundamental document that carried serious consequences for the tenant of a property. As Sheriff Johnston noted in the Govan case detailed above “service of a Notice To Quit which is such a fundamental and important document for the purposes of recovery of heritable possession that it required to be served in the manner set out in 34.8 (*being a reference to the relevant Sheriff Court rules*) and that this did not brook any other method of service.”

Whilst the Tribunal did not question the honesty of the Applicant or their Representative and accepted that they had delivered the notice by hand none the less the Notice To Quit was fundamental and it would be open to abuse by some less scrupulous landlords if they could easily produce evidence of supposed hand delivery without some independent third party having been involved. The Rules regarding service ensured the involvement of Royal Mail or Sheriff Officers and provided protection against abuse.

The Tribunal had no alternative but to dismiss 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.

Alison Kelly

Legal Member/Chair

J

Date

14/11/19