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/19/0762

Re: Property at 7 Kingsmills Court, Elgin, IV30 4EW ("the Property")

Parties:

Mr Stephen Parker, Mrs Gillian Parker, L'Abbaye des Chateliers, 79340, Fomperron, France ("the Applicants")

Mrs Dorata Ewa Ofat, 7 Kingsmills Court, Elgin, IV30 4EW ("the Respondent")

Tribunal Members:

Rory Cowan (Legal 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 refused.

- Background

The Applicants submitted an application to the First-tier Tribunal which was received on 7 March 2019 (the Application) seeking an order for possession in relation to the Property in terms of Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (as amended) (the Rules). A Case Management Discussion (CMD) took place on 15 April 2019. The Applicants attended the CMD by way of conference call and a Mrs Katie Ramsay attended in person on their behalf to observe and assist the tribunal if required. The Respondent did not attend, nor was she represented. No written responses were lodged on her behalf.

- The Case Management Discussion

The Applicants indicated that they sought an order for possession relative to the Property citing ground 8 of schedule 5 of the Housing (Scotland) Act 1988 (the 1988

Act), in that the Respondent was in at least 3 months rent arrears. With the Application, there was lodged:

1) A copy of the lease dated 7 July 2015;
2) A copy rent statement detailing arrears of £5,150;
3) A Notice to Quit (NTQ) dated 3 January 2019;
4) Form AT6 dated 3 January 2019;
5) Royal Mail Track and Trace Proof of delivery on 5 January 2019; and
6) Section 11 Notice to the local authority.

The Lease

The terms of the lease dated 7 July 2015 (the Lease) were discussed. In particular, it was noted that the duration or term and the start date of the Lease was stated as being "six months beginning on 7th July 2015". The *ish* of end date was not expressly stated.
The expression "beginning on" does not expressly (or by implication) suggest that the whole of the first day of the lease is to be included when working out the *ish* or end date meaning that the standard way of calculating lease terms should apply (*civillus computatio*) and that the first day should not be counted in the 6 month term. "Beginning on" is akin to "commencing on" which has been held to mean that the whole of the first day should not be included when calculating the term of the lease (Key Housing Association Ltd v Cameron 1999 Hous.L.R. 47). Applying *civillus computatio* gives us a fist *ish* date of 7 January 2016. Tacit Relocation does not appear to have been excluded from the Lease and as such the lease has continued on 6 monthly terms with *ish* dates on 7 January and 7 July of each year.

Further, in clause 1 of the lease, the following is stated:

"...the tenancy may be brought to an end by order for possession granted by the sheriff on the application of the Landlord or the heritable creditor of the Landlord in any of the circumstances set out in grounds 2, 8 or 9 to 17 inclusive in Schedule 5 to the Housing (Scotland) Act 1988....."

The Applicants were referred to section 18(6) of the 1988 Act and that, whilst a landlord could rely upon ground 8 of schedule 5 of the 1988 Act to recover possession whilst a contractual tenancy was still running, in order to be able to do that, the lease in question makes "provision for it to be brought to an end on the ground in question" (section 18(6)(b)). This requirement has been held to mean that in order to meet it, either the ground must be repeated or incorporated in full into the terms of the lease in question or at very least the essential ingredients of the ground of eviction in question. That means in terms of ground 8 of Schedule 5, that a landlord would require to do more than simply list ground 8 itself and that some further explanation including that the tenant must be in arrears at the date of service of the AT6 and at the tribunal hearing (Royal Bank of Scotland v Boyle 1999 Hous L.R. 63).

Having regard to these issues, the terms of the NTQ and the Form AT6 served by the Applicants were then discussed.

The NTQ was dated 3 January 2019 and was stated as expiring on "6 March 2019". That is not an *ish* date for the reasons set out above. The NTQ served by the Applicants is invalid and therefore does not operate to terminate the contractual tenancy.

Thereafter, the Tribunal looked at the terms of clause 1 of the Lease. As detailed above, all that clause 1 does is to list Ground 8 as a potential basis for ending the tenancy with no further explanation as to the essential ingredients of that ground. As such, the Tribunal took the view that the terms of the Lease were not such to meet the requirements of section 18(6) of the 1988 Act. As such, in order to be in a position to grant an order for possession, the contractual tenancy would have to have been terminated. As detailed already, it was not and as such no such order for possession could be granted.

The Form AT6

One of the requirements for the Form AT6 is that not only the ground of possession be stated within the form, but that the "Particulars of" that ground be included too (section 19(2) of the 1988 Act). What that means in practice is that not only should Ground 8 be specified where shown in part 2 of the Form AT6, but in part 3 a landlord should state in summary form the facts they intend to prove in support of that ground. Where rent arrears grounds are being relied upon, that means the amount of the arrears or at very least sufficient information to allow the tenant to calculate what is due. Where the notice does not do that, it is invalid for the purpose of an order for possession. In the case of the Form AT6 lodged with the application, there is no such information provided at part 3 and all that has been done is to repeat the wording of ground 8, which also appears at part 2 of the Form AT6. This is not sufficient to discharge the requirements of section 19(2) of the 1988 Act. Accordingly, even if the NTQ had terminated the contractual tenancy between the parties, the Form AT6 would have been invalid too for the purpose of granting an order for possession.

- Findings in Fact and Law

1) That the tenancy between the parties commenced on 7 July 2015.

2) That the initial *ish* date was 7 January 2016.

3) That the tenancy is one that is covered by the requirements of section 18 and 19 of the Housing (Scotland) Act 1988.

4) That Tacit relocation has operated to continue the tenancy at 6 monthly intervals since.

5) That the terms of the lease dated 7 July 2015 do not meet the requirements of section 18(6) of the Housing (Scotland) Act 1988.

6) That the Notice to Quit dated 3 January 2019 did not operate to terminate the contractual tenancy.

7) That, in any event, the Form AT6 does not meet the requirements of section 19(2) of the Housing (Scotland) Act 1988.

8) That the Applicants are not entitled to an order for possession.

- Reasons for Decision

The Applicants not having met the requirements of section 18(6) and 19(2) of the 1988 Act and not having terminated the contractual tenancy between the parties as detailed above are not entitled to an order for possession relative to the Property.

- Decision

The Application is 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.

Rory Cowan

Legal Member

15 April 2019

Date