



**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/18/1650

**Re: Property at 53 Spruce Road, Abronhill, Cumbernauld, G67 3AX (“the
Property”)**

Parties:

Mr Steven Hall, Unit 1, Faraday Court, Dundee, DD2 3UD (“the Applicant”)

**Miss Amy Beattie, 53 Spruce Road, Abronhill, Cumbernauld, G67 3AX (“the
Respondent”)**

Tribunal Members:

Neil Kinnear (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

This is an application dated 29th June 2018 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with his application copies of the short assured tenancy agreement, form AT5, section 19 notice (form AT6), section 11 notice, and relevant executions of service. All of these documents and forms, except in respect of the section 11 notice, had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The form AT6 intimated to the tenant that the landlord intended to raise proceedings for possession of the house on grounds 8, 11, and 12 in Part II of Schedule 5 to the *Housing (Scotland) Act 1988*.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 23rd August 2018, and we were provided with the execution of service.

The Hearing

A hearing was held on 11th September 2018 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Ms Euphemia Matheson, solicitor. The Applicant's father attended with Ms Matheson. The Respondent did not appear, nor was she represented.

The Tribunal noted that the application appeared to be in proper form and in compliance with the appropriate statutory provisions and rules of procedure, save in respect of the section 11 notice.

A section 11 notice had been served on the local authority, and had been prepared utilising the appropriate form, but it narrated the name of the tenant against whom proceedings have been raised as Stephanie Watson, rather than the Respondent.

Ms Matheson accepted that the section 11 notice did state the wrong name for the tenant, but submitted to us that the provisions of section 19A of the *Housing (Scotland) Act 1988* were directory, rather than mandatory, and that accordingly she invited us to grant the order sought.

She accepted for the purposes of her legal argument that if no section 11 notice had been served at all, that the Tribunal could nonetheless grant an order as section 19A was not mandatory in effect. Ms Matheson candidly accepted that there was no case authority on this point one way of the other.

The Tribunal carefully considered her submission, but concluded that it could not accept it. The Tribunal considered that the provisions of section 19A were mandatory in effect, and that accordingly that we could not grant an order in circumstances where we consider the notice to be defective and ineffective.

Statement of Reasons

Section 19A of the *Housing (Scotland) Act 1988* ("the 1988 Act") is in the following terms:

"19A Requirement to notify local authority of proceedings for possession

(1) Where a landlord raises proceedings for possession of a house let on an assured tenancy, the landlord shall give notice of the raising of the proceedings to the local

authority in whose area the house is situated, unless the landlord is that local authority.

(2) Notice under subsection (1) above shall be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003 (asp 10).”

Sections 11(1) and (3) of the *Homelessness etc. (Scotland) Act 2003* (“the 2003 Act”) provide:

“11 Notice to local authorities of proceedings for possession and enforcement of standard securities

(1) Where a landlord raises proceedings for possession of a dwellinghouse, the landlord must give notice of the raising of the proceedings to the local authority in whose area the dwellinghouse is situated, unless the landlord—

(a) is the local authority, or

(b) is required to give such notice to the local authority under any other enactment.

(3) The Scottish Ministers may by regulations made by statutory instrument prescribe—

(a) the forms of notices to be given under subsection (1) and under the enactments specified in subsection (5) (which include the enactments modified by the schedule to this Act), and

(b) the manner in which such notices are to be given.”

The Scottish Ministers made such regulations regarding the form of notice in terms of schedule 1 of the *Notice to Local Authorities (Scotland) Regulations 2008/324*.

The section 11 notice in this application was prepared in the correct form, but it named the wrong person as the tenant. In our view, the identification to the local authority of the person against whom proceedings are being taken by the landlord is essential to the validity of the notice, and accordingly we consider the notice to be an ineffective one.

That leaves the question of whether the service of an effective notice is mandatory in terms of the relevant legislation above referred to.

Like Ms Matheson, the Tribunal could also find no direct case authority on this point, nor indeed any commentary on it in any of the legal textbooks on this subject.

However, it appeared to us that the wording of the legislation is clearly mandatory. The 1998 Act states the landlord “shall” give notice, and the 2003 Act states that the landlord “must” give notice.

We would refer to the *Stair Memorial Encyclopedia, Volume 12, “Interpretation of Statutes”* at paragraph 1176, which states:

"As to whether an enactment which is mandatory in form is in effect mandatory or merely directory 'no universal rule can be laid down ... It is the duty of courts of justice to try to get at the real intention of the legislature by attending to the whole scope of the statute to be construed'.

'You cannot safely go further than that in each case you must look to the subject-matter, consider the importance of the provision that has been disregarded and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory'."

The latter passage is a quote from the case of *Howard v Bodington* (1877) 2 PD 203 at 211, per Lord Penzance.

The Tribunal considered the Policy Memorandum of the Scottish Executive in relation to the *Homelessness Etc. (Scotland) Bill*, to aid it in discerning the general object intended to be secured by the bill which was subsequently enacted as the 2003 Act, and the intention of the legislature in that regard. At paragraph 21 it states:

"The Bill also requires landlords to notify the relevant local authority of proceedings of possession. This will give local authorities the opportunity to intervene early in order to prevent homelessness occurring. Even where this is not possible, notification gives the local authority advance notice that the household in question will potentially be in housing need in the near future. The Bill allows Ministers to issue guidance on the action to be taken by local authorities on the receipt of notices. The Executive's clear expectation is that the authority will, where appropriate, respond to prevent homelessness occurring or intervene early in cases where the household becomes homeless. This is in accordance with the Executive's emphasis on preventing homelessness – an emphasis which local authorities should be reflecting in their homelessness strategies. It should be noted that where an applicant is likely to become homeless within 2 months the local authority owes them a duty under section 32 of the 1987 Act to take reasonable steps to ensure that they do not lose their accommodation. Receipt of notifications will also be of strategic benefit to local authorities in assessing homelessness flows in their area and producing their homelessness strategies."

It appears clear to us that the object which the legislation intended to secure was that a notice would be served by a landlord on a local authority advising it of the raising of proceedings, in order that the local authority was aware of the potential that the tenant might become homeless, and could take appropriate early action if it is required to do so in order to prevent homelessness occurring.

That being so, we consider that the provisions in relation to the serving of a section 11 notice by a landlord are mandatory in effect, and that we cannot properly grant the order sought unless and until a valid section 11 notice is served.

Standing our decision on this point, Ms Matheson invited us to adjourn the hearing in order to allow the landlord to serve a valid section 11 notice on the local authority.

Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on an application by a party to adjourn a hearing on cause shown.

We consider that Ms Matheson has shown there is there is good reason why an adjournment is necessary, in circumstances where the section 11 notice contains an error which renders it ineffective and the landlord requires to serve a replacement valid section 11 notice on the local authority. We will accordingly exercise our discretion to adjourn this Case Management Discussion to a further date on cause shown.

Decision

In these circumstances, the Tribunal adjourned this hearing for the above-mentioned reasons in terms of Rule 28(1) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended to 10.00 on 11th October 2018 at Glasgow Tribunals Centre, 20 York Street, Glasgow, which date was intimated to Ms Matheson at the hearing today, but will require to be intimated to the Respondent.

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.

Neil Kinnear

11/09/18

Legal Member/Chair

Date