

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 18(1) of the Housing(Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/19/2442

Re: Property at 41 The Rand Square, Eastriggs, Annan, DG12 6NN ("the Property")

Parties:

Mr Lindsay Johnston, Mrs Pamela Johnston, Fieldview, Kirtlebridge, Lockerbie, DG11 3NA ("the Applicant")

Mr Timothy Rees, Ms Sandra Douglas, 41 The Rand Square, Eastriggs, Annan, DG12 6NN ("the Respondent")

Tribunal Members:

Graham Harding (Legal Member)

Decision

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

Background

1. By Application dated 21 August 2019 the Applicant's representatives McJarrow & Stevenson, Solicitors, Lockerbie applied to the Tribunal for an order for the possession of the property and the ejection of the Respondents. They provided the Tribunal with a copy of the tenancy agreement, copy AT6, copy Certificate of Service, copy rent statement, copy notice to local Authority and a mandate from the Applicants.
2. By Notice of Acceptance dated 3 September 2019 a legal member of the Tribunal accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management Discussion was sent to the Applicant's representatives by post on 12 September 2019 and to the Respondents by Sheriff Officers on 13 September 2019.
4. The Respondents' representatives Hann & Co, Solicitors submitted written representations to the Tribunal by email dated 2 October 2019. The Applicants' representatives submitted further written representations by email dated 10 October 2019.

The Case Management Discussion

5. A Case Management Discussion was held at Lochvale House, Georgetown Road, Dumfries on 15 October 2019. The Applicants did not attend but were represented by Ms Kara Duke of McJerrrow & Stevenson, Solicitors, the Respondents attended personally and were represented by Mr Joe Hann of Hann & Co, Solicitors.
6. Ms Duke's position was that as could be evidenced from the rent statement provided more than three months' rent was outstanding both at the date of the Case management discussion and at the date the Forms AT6 had been served on the Respondents and therefore the requirements of Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act") had been met. The Tribunal should therefore grant the order sought.
7. For the Respondents Mr Hann submitted that the Forms AT6 had been invalid and therefore the order should not be granted.
8. The Tribunal queried whether a Notice to Quit had been served prior to the /Forms AT6 being served. Ms Duke advised the Tribunal that as she was seeking possession under Rule 65 no Notice to Quit was required.
9. The Tribunal referred the parties representatives to the terms of Section 18(6) of the 1988 Act and queried whether the tenancy was a statutory assured tenancy. The legal member of the Tribunal explained that it appeared that as no Notice to Quit had been served on the Respondents that there was a contractual tenancy in place.
10. Ms Duke advised the Tribunal that a Notice to Quit had been served along with the Forms AT6 and provided a copy for the Tribunal. The Tribunal noted the Notice to Quit was served on 16 May 2019 and gave the Respondents one month's notice to 25 June 2019 rather than the two months required in terms of the tenancy agreement.
11. The legal member of the Tribunal pointed out to the parties representatives that the tenancy agreement did not make provision for the tenancy to be brought to an end on the ground in question as was a requirement of Section 18(6)(b) of the 1988 Act. The tribunal referred the parties representatives to the decisions in the cases of Royal Bank of Scotland v Boyle 1999 Housing Law Reports 63 and Eastmoor LLP v Keith Bulman 2014 SCDUM31. The

legal member pointed out that in both those cases the order for possession had been refused because there had been a contractual short assured tenancy in place that had not reached its end and the grounds of possession were not specified in the lease.

12. The legal member suggested that the current proceedings were very similar to these cases. The tenancy agreement did not contain any reference to the grounds of possession in schedule 5 of the 1988 Act therefore the Tribunal could not make an order for possession unless there was a statutory assured tenancy and that required the contractual tenancy to be brought to an end by the service of a valid Notice to Quit. The Notice to Quit served on the Respondents did not appear to be valid as it did not provide the necessary period of notice but even if it had been valid the Forms AT6 could not be properly served until after the period of notice had expired and they had been served at the same time as the Notice to Quit.
13. Mr Hann indicated that his clients had only ever received part of the tenancy agreement and not the parts containing the terms and conditions. He accepted that this may not be an issue if the proceedings were incompetent. They had not received an AT5.
14. Ms Duke accepted that the application was incompetent but asked the Tribunal not to dismiss the application but to continue it to allow her to amend the application by serving a new Notice to Quit on the Respondents followed by new Forms AT6 and a further amended application as this would allow the application to be dealt with more quickly than having to make a fresh application.

Findings in Fact

15. The parties entered into a Tenancy agreement that commenced on 21 August 2013 for a period of 6 months until 21 February 2014 and from month to month thereafter until terminated by either party giving two months' notice in writing.
16. The Applicants' representatives served forms AT6 and Notices to Quit on the Respondents by Sheriff Officers on 16 May 2019.
17. The Notices to Quit were invalid as they failed to give the Respondents two months written notice of the termination of the tenancy.
18. The tenancy agreement did not contain any reference to the grounds of Schedule 5 of the 1988 Act on which the Applicants could seek possession of the property.
19. The Forms AT6 served on the Respondents were invalid as at the time they were served there was a contractual assured tenancy in place and not a statutory assured tenancy.

Reasons for Decision

20. Section 18(6) of the 1988 Act makes it clear that the Tribunal cannot make an order for possession under Ground 8 of Schedule 5 if that ground has not been specified as a ground in the tenancy agreement unless the contractual tenancy has been replaced by a statutory assured tenancy.
21. As the Notices to Quit served on 16 May 2019 were defective as they did not provide the Respondents with the period of notice required in terms of the tenancy agreement and had the incorrect ish the Tenancy remained a contractual assured tenancy and not a statutory assured tenancy.
22. As the Grounds for possession were not incorporated into the tenancy agreement possession on ground 8 of Schedule 5 could only be granted by the Tribunal once a statutory assured tenancy had been created.
23. Even if the Notices to Quit had been validly served the applicants could not have served valid Forms AT6 until after the period of notice had expired. The Forms AT6 were therefore invalid.
24. The ratio in Royal Bank of Scotland v Boyle is applicable to this application and it follows that the application must be dismissed. It would not be appropriate to continue the application to allow the /Applicants representatives to serve fresh notices to Quit then fresh forms AT6 then an essentially new amended Form E. It is more appropriate to dismiss this application and the applicants can start again in due course if they wish.

Decision

25. The application is dismissed.

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.

Graham Harding

Legal Member/Chair

Date

15 October 2019