



DECISION BY SHERIFF ANTHONY DEUTSCH ON AN APPEAL

in the case of

MR JAGDISH SINGH PANPHER

Appellant

and

MISS CHRISTINA MCDONALD

Respondent

FTT Case Reference FTS/HPC/EV/18/1570

Decision

The Upper Tribunal refuses leave to appeal.

Note

[1] The appellant in his email of 5 August 2018 advances a number of cogent reasons why, if it had a discretion to do so, the tribunal might allow the application for an eviction order to proceed, notwithstanding the defect identified in the notice to leave upon which the appellant relies. Unfortunately no such discretion exists. The tribunal can only operate within the terms of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and subordinate legislation in the form of regulations made by the Scottish Ministers. In terms of

that legislation the tribunal is prohibited from entertaining an application for an eviction which is not accompanied by a valid notice.

[2] The starting point is section 52 of the 2016 Act which is in the following terms:

“52. Applications for eviction orders and consideration of them

- (1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.
- (2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—
 - (a) subsection (3), or
 - (b) Any of sections 54 to 56 (but see subsection (4)).
- (3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.
- (4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.
- (5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—
 - (a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or
 - (b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.”

[3] The first thing to notice is that subsection (2) states quite clearly that the tribunal is not to entertain an application for an eviction order if it is made in breach of subsection (3), which says that an application for an eviction order against the tenant must be accompanied by a notice to leave which has been given to the tenant. What is meant by “a notice to leave” is defined by section 62 of the 2016 Act.

[4] Before I address the definition, a further feature of section 52 which deserves attention is the fact that subsection (4) confers a discretion on the Tribunal to waive an application made in breach of section 54 (restriction on applying during the notice period), which raises the clearest implication possible that no such discretion exists for a breach of subsection (3).

[5] Turning to section 62, it is in the following terms:

“62. Meaning of notice to leave and stated eviction ground

- (1) References in this Part to a notice to leave are to a notice which—
 - (a) is in writing,
 - (b) Specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,
 - (c) States the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and
 - (d) Fulfils any other requirements prescribed by the Scottish Ministers in regulations.
- (2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.
- (3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).
- (4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.
- (5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.”

[6] Subsection (1) (b) provides that a notice to leave must specify the day on which the landlord expects to become entitled to make an application for an eviction order; a purported notice to leave which lacks that information is not a notice to leave within the meaning of the 2016 Act.

[7] Subsection (1) (d) provides that a valid notice to leave must fulfil any requirements which may be set out in regulations made by Scottish Ministers. Regulation 6 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 stipulates that a notice to leave given by the landlord to the tenant must be in the form set out in schedule 5. Part four of the form is reproduced below:

Part 4 – THE END OF THE NOTICE PERIOD

An application will not be submitted to the Tribunal for an eviction order before _____(insert date). This is the earliest date that Tribunal proceedings can start and will be at least the day after the end date of the relevant notice period (28 days or 84 days depending on the eviction ground or how long you have occupied the Let Property).

Signed:
(Landlord(s) or Agent): _____

Dated: _____

[8] There is a blank for the insertion of the earliest date that Tribunal proceedings can start. There is an instruction to insert a date. If no date is inserted then there has not been compliance with regulation 6. If regulation 6 has not been complied with then the notice is not compliant with section 62 (1) (d) and accordingly it is not a notice to leave within the meaning of the 2016 Act. The Tribunal cannot overlook that fact, notwithstanding that the tenant may be anxious to be evicted and might well have been able to deduce from the separate notice to quit what the missing date should have been. It is not for the Tribunal to pass comment on whether the form is well-designed or otherwise.

[9] It is unfortunate that the tribunal decision of 23 July 2018 did no more than baldly state that in the legal member's view the failure to specify a date at part 4 of the notice to leave rendered the form invalid without going on to provide reasoning for that proposition by reference to the 2016 Act. Had the appellant received a proper explanation then that might have been the end of the matter; he may have been encouraged simply to waste no time in issuing a fresh notice to leave in valid form.

*A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within **30 days** of the date on which this decision was sent to him or her. Any such*

request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.