



DECISION NOTICE OF SHERIFF DEREK J HAMILTON

on an Application for Permission to Appeal
(Decision of First-Tier Tribunal for Scotland)

in the case of

MS EVELYN GDULA, 7 Old Mill Lane, Uddingston, Glasgow, G71 1PD
per Clarity Simplicity Limited,
34 Woodlands Road, Glasgow, G3 6UR

Appellant

and

FIRST-TIER TRIBUNAL FOR SCOTLAND HOUSING AND PROPERTY CHAMBER,
Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT;

MS JEANNE ROONEY, 5 Salton Crescent, Dundee, DD4 0HY

Respondents

FTT Case Reference FTS/HPC/EV/18/2820

16 July 2019

Decision

The Upper Tribunal, in terms of Rule 3(6)(a), of The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016, refuses permission to appeal.

Introduction

[1] By decision dated 31 December 2018, The First Tier Tribunal (FTT) rejected the Appellant's application to recover possession of property at 5 Salton Crescent, Dundee. It found the application to be frivolous. Application was then made by the Appellant to the FTT for leave to appeal that decision to the Upper Tribunal. That application was refused by

the FTT on 4 February 2019. The Appellant now seeks permission of The Upper Tribunal to appeal the FTT's decision of 31 December 2018.

[2] The property had been let under a tenancy agreement dated 5 July 2017. The tenancy purported to be a short assured tenancy. The FTT held that the appropriate procedure for creating such a tenancy had not been followed, and that the tenancy was therefore not a short assured tenancy, but simply an assured tenancy. As an assured tenancy, it could only be terminated in particular circumstances. The tenancy agreement did not properly provide termination provisions, and as a result the tenancy could only be brought to an end at its ish. The Appellant, in seeking to recover possession, served an AT6 and a notice to quit, but not at a date coinciding with the ish.

Grounds of appeal

[3] The First Tier Tribunal referred to the Tenancy as being a Contractual Tenancy, when in fact it was an Assured Tenancy.

[4] As the Tenancy was an Assured Tenancy, notice of termination must be in form AT6 (Section 18(3)). The required period of notice was two weeks (Section 18(4)). The First Tier Tribunal had erred in taking into account the Notice to Quit that had been served, and had erred in its interpretation of Section 19.

[5] The First Tier Tribunal had erred in its interpretation of the case of *Royal Bank of Scotland v Boyle*.

Discussion

[6] The Appellant sought to recover possession under the provisions of a tenancy agreement, which the Appellant described in her application as an “Assured Tenancy Agreement”. The Appellant did not claim the tenancy was anything other than an assured tenancy, and the application proceeded on that basis. The Appellant relied upon steps she had taken to terminate an assured tenancy. The FTT was therefore dealing *prima facie* with an application to enforce an assured tenancy. When seeking further information from the Appellant, the FTT referred to the tenancy agreement as a contractual tenancy. That appeared simply to be descriptive of the fact that there was a written contract. The FTT held that the procedure which the Appellant had sought to rely upon to recover possession in terms of her “Assured Tenancy Agreement” was flawed as her “Assured Tenancy Agreement” did not meet the statutory requirements to enable such a method of enforcement. In refusing the Appellant’s application for leave to appeal, the FTT made clear in its decision dated 4 February 2019, that it accepted the tenancy was an Assured Tenancy, and that it had proceeded on that basis.

[7] The FTT considered both the use of an AT6 and the use of a notice to quit, as methods to recover possession. The FTT noted the terms of Section 18 of the Act (Orders for Possession). Section 18 is subject to the terms of Section 19. Section 18(6)(b) provides that where recovery for possession is Ground 8 in Part 1 of Schedule 5, or any of the grounds in Part II of that schedule, the terms of the tenancy must make provision for it to be brought to an end on the ground in question. Section 19 provides the form of the notice of proceedings for possession to be given, and the manner in which notice is to be given if possession is to proceed under Section 18.

[8] An AT6, or equivalent notice, is the appropriate notice (in terms of Section 19) for recovery under Section 18. Section 18 deals with orders for possession of assured tenancies. The FTT took no issue with the terms of the AT6. Section 18(6)(b) provides that where recovery for possession is Ground 8 in Part 1 of Schedule 5, or any of the grounds in Part II of that schedule, the terms of the tenancy must make provision for it to be brought to an end on the ground in question.

[9] The FTT found that the Appellant's tenancy agreement did not make provision for it to be brought to an end on the ground in question (ie Ground 8 in Part 1 of Schedule 5, or any of the grounds in Part II of that schedule). That is a matter of fact to be determined by the FTT.

[10] If the provisions of Section 18(6) have not been complied with, it does not matter that any AT6 that has been served is in proper form. If the provisions of Section 18(6) have not been complied with, the notice periods in terms of Section 19(4) do not then apply.

[11] The FTT, in reaching its decision quite properly took into account the fact that a notice to quit had been served. The Appellant had sought recovery on the basis of both the AT6 and the notice to quit having been served. The FTT found that the notice period in terms of Section 19(4) did not apply, as the tenancy agreement did not comply with the terms of Section 18(6)(b).

[12] The FTT referred to the decision of *Royal Bank of Scotland v Boyle* 1999 Hous LR 63. It was a matter of fact for the FTT to determine if the tenancy agreement met the requirements of Section 18(6)(b).

Conclusion

[13] The FTT dealt with the application on the basis the tenancy was an assured tenancy. In doing so it did not err in law.

[14] The FTT correctly identified that for the possession provisions of Section 18 to apply (on the grounds sought by the Appellant), the tenancy agreement had to comply with the terms of Section 18(6)(b). The Appellant has not identified any basis for finding this to be an error in law. The FTT found as a matter of fact that the tenancy agreement did not comply with the terms of Section 18(6)(b).

[15] Further the FTT found that as the possession provisions of Section 18 did not apply, the notice periods in Section 19(4) did not apply. The Appellant has not identified any basis for finding this to be an error in law.

[16] The Appellant chose to rely on service of a notice to quit in her application to the FTT. The FTT dealt with the notice to quit in its decision. The Appellant has not identified any basis for finding that the FTT erred in law in doing so.

[17] It was a matter of fact for the FTT to determine if the tenancy agreement met the requirements of Section 18(6)(b). The Appellant has not identified any basis for finding this to be an error in law.