



Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/20/0802

Re: Property at 15 Strathaven Road, Lesmahagow, ML11 0DN (“the Property”)

Parties:

Patersons Property Investment Partnership LLP/ Patersons of Greenoakhill Ltd, Gartsherrie Road, Coatbridge, ML5 2EU (“the Applicant”)

Miss Clare Brown, 15 Strathaven Road, Lesmahagow, ML11 0DN (“the Respondent”)

1. On 5 March 2020 an application was received from the Applicant. The application was made under Rule 66 of the Tribunal’s Procedural Rules being an application by a private landlord for possession of rented property let under a Short Assured Tenancy. The following documents were enclosed with the application:-
 - (i) Tenancy Agreement;
 - (ii) Form AT5;
 - (iii) Email correspondence from the Respondent giving notice to end the tenancy.

2. The Tenancy Agreement was in the name of the Applicant and the Respondent. The Tenancy Agreement was signed. There was an AT5 Form attached. The Tenancy Agreement states that tenancy shall start on 29 January 2016 until 28 July 2016 and monthly thereafter. There was an email sent on 10 December 2019, apparently from the Respondent to the letting agent for the Applicant advising that she wished to terminate the tenancy as at 28 February 2020. There was no Notice to Quit, Section 33 Notice or Section 11 Notice submitted with the application.

DECISION

3. I have considered the application terms of Rule 8 of the Chamber Procedural Rules. That Rule provides :-

“Rejection of application

8.—(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if—

- (a) they consider that the application is frivolous or vexatious;*
- (b) the dispute to which the application relates has been resolved;*
- (c) they have good reason to believe that it would not be appropriate to accept the application;*
- (d) they consider that the application is being made for a purpose other than a purpose specified in the application; or*
- (e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.*

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision.”

4. After consideration of the application, I consider that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.

REASONS FOR DECISION

5. “Frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env. L.R. at page 16, he states: - *“What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic”*. It is that definition which I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived and has no prospect of success.

6. Section 33 of the 1988 Act provides as follows:-

33 - Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First –Tier Tribunal shall make an order for possession of the house if satisfied that—

(a) that the short assured tenancy has reached its ish;

(b) that tacit relocation is not operating;

(c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.

(2)The period of notice to be given under subsection (1)(d) above shall be—

(i)if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii)in any other case, two months.

7. The application was made under rule 66 of the Procedural Rules “*application for possession upon termination of a short assured tenancy*”. The rules narrate that any application requires to be accompanied by a notice under section 33 of the Housing (Scotland) Act 1988; a Notice to Quit served by the landlord on the tenant; and a copy of the notice by the landlord to the local authority under section 11 of the Homelessness (Scotland) Act 2003. None of these documents accompanied the application. A further information request was made on 9 March 2020. A response was received from the Applicant on 9 March 2020, which advised that a notice to quit had not been served as the tenant had given notice to end the tenancy, but then remained in the property. There was no further information supplied in regard to the section 33 or 11 notices.

8. To recover possession of a short assured tenancy under section 33 of the 1988 Act, the tribunal must be satisfied that the requirements of this section are met. Even if the notice received from the tenant is sufficient to constitute a notice to quit ending the contractual tenancy and preventing the operation of tacit relocation (and I do not require to

determine that matter in this decision), there was no section 33 notice submitted with the application and accordingly, the statutory requirements have not been.

9. For the reasons set out above, as the statutory requirements have not been met it seems to me that the application is frivolous and should be rejected.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:-

An applicant aggrieved by the decision of the Chamber President, or any Member acting under delegated powers, 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 of the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

Legal Member/Chair

07.7.2020