

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)

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/20/0218

Re: 1 Newton Avenue, Skinflats, Falkirk, FK2 8NW ("the Property")

Parties:

Grange Property ("the Applicant")

Mr Rodney Foster ("the Respondent")

BTO Solicitors LLP ("Applicant's Representatives")

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined 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 and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).

Background

1. The application was received by the Tribunal under Rule 65 on 22 January 2020. The grounds for possession/eviction were stated to be Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 (Act). The following documents were enclosed with the application:

- (i) Tenancy Agreement commencing 6 April 2017 until 6 November 2017 for a period of 6 months, continuing by tacit relocation for a period of two months thereafter;

- (ii) AT5 dated 6 April 2017;
- (iii) AT6 dated 22 July 2019;
- (iv) Notice to Quit dated 22 July 2019 and specifying 1 October 2019 as the date to quit;
- (v) Royal Mail Track and Trace.

2. The application was considered by the Tribunal and further information was requested by letter of 3 February 2020. In particular the Applicant's Representatives were requested to comment on the validity of the Notice to Quit given that it did not coincide with the ish date of the tenancy and also to produce the section 11 Notice. The Applicant's Representatives responded by email of 17 February 2020 and queried the Tribunal's interpretation of the ish date.

3. The application was considered again by a Legal Member on 18 February 2020 and the Applicant's Representatives were requested to provide their comments on the validity of the notice to Quit. The Applicant's Representatives responded by email of 24 February 2020 stating that 1 October had been inserted by mistake instead of 6 October and submitted the Tribunal should adopt "*a commercially common sense, purposive approach despite the discrepancy in the ish date*". No section 11 Notice was produced.

Reasons for Decision

4. The Tribunal considered the application in 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;*
- (c) they have good reason to believe that it would not be appropriate to accept the application;*

(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."

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. 9*. 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".

6. The application seeks to proceed under Rule 65. In order to do so the tenancy must have been validly terminated and tacit relocation not be operating. The ish date of the tenancy is the 6 day of every second month. In this instance the relevant ish dates would have been 6 September and 6 November both 2019. The Notice to Quit stated 1 October as the ish date which was patently wrong. The tenancy was not

terminated and tacit relocation continued to operate. Further, no section 11 Notice was produced.

7. In light of the above reasons the Tribunal cannot grant the order sought. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is frivolous, misconceived and has no prospect of success. Furthermore, the Tribunal consider that there is good reason why the application should not be accepted. The Applicant has failed to provide necessary information requested within a reasonable time. The application is accordingly rejected.

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.

Alan Strain

10 March 2020

Legal Member/Chair

Date