



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/20/0324

Re: 5H, Darroch Way, Seafar, Cumbernauld, G67 1QB ("the Property")

Parties:

Shahida Khan ("the Applicant")

The Cumbernauld Law Practice ("the Applicant's Representatives")

Linda Gallagher ("the Respondent")

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 dismissed 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 109 on 30 January 2020. The grounds for possession/eviction were stated to be Grounds 11 and 12. The following documents were enclosed with the application:
 - (i) Notice to Leave undated;
 - (ii) Section 11 Notice;
 - (iii) Bank Statements;
 - (iv) Rent Statement.

2. The application was considered by the Tribunal and further information was requested by letter of 11 February 2020. The Applicant's Representatives were asked to:

- (a) Provide proof of service of the Notice to Leave; and
- (b) Confirm whether or not they wished to proceed under Ground 11.

The Applicant's Representatives were given until 25 February 2020 to respond failing which the application may be rejected.

3. The Applicant's Representatives responded by letter of 2 March 2020 enclosing WhatsApp conversation between the Parties confirming receipt of the Notice to Leave on 24 November 2019. The Notice to Leave specified that proceedings would not be raised before 12 December 2019. It was also confirmed that Ground 11 was not to be relied upon.

4. The Tribunal considered the Applicant's response on 10 March 2020.

Reasons for Decision

5. 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."

6. '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"*.

7. The Notice to leave specified 12 December 2019 as the date before which proceedings would not be raised. In terms of section 54(2) of the Act:

The relevant period in relation to a notice to leave—

- ***(a)begins on the day the tenant receives the notice to leave from the landlord, and***
- ***(b)expires on the day falling—***
- ***(i)28 days after it begins if subsection (3) applies.***

The Notice to Leave was received on 24 November 2019. In terms of section 62 of the Act:

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.

The earliest date proceedings could be raised was specified as 12 December 2019 which is less than 28 days from the date of service and accordingly insufficient notice was given under the Act.

The Notice to Leave is accordingly invalid and the Tribunal could not 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 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