Housing and Property Chamber
First-tier Tribunal for Scotland

DECISION AND STATEMENT OF REASONS OF ANDREW UPTON, LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT

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

in connection with

43 Dalriada Crescent, Motherwell, ML1 3XT

Case Reference: FTS/HPC/EV/19/2467

TCIB Residential LLP t/a Newkeylets ("the applicant")
Mr Slawomir Biernacki ("the respondents")

1. On 8 August 2019, an application was received from the applicant. The application was made under Rule 66 of the Procedural Rules being an application for an order for possession upon termination of a short assured tenancy. The following documents were enclosed with the application:-
    - Copy tenancy agreement dated 2 October 2015
    - Copy Form AT5 dated 2 October 2015
    - Copy notice to quit dated 15 May 2019
    - Copy Notice under section 33 of the Housing (Scotland) Act 1988 dated 15 May 2019
    - Copy AT6 dated 15 May 2019
    - Copy Notice to Local Authority under section 19A of the Housing

(Scotland) Act 1988

DECISION

2. I considered the application in terms of Rule 8 of the 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."

3. After consideration of the application, the attachments and correspondence

from the applicant, I consider that the application should be rejected on the basis that it appears to be frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules, and I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

REASONS FOR DECISION

4. '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".* It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

5. Section 33 of the Housing (Scotland) Act 1988 provides a basis for recovery of possession of properties let on Short Assured Tenancies. In terms of subsection (1), the Tribunal must be satisfied of four things:- (i) that the short assured tenancy has reached its ish (that is to say, its natural expiry); (ii) that tacit relocation is not operating; (iii) that no further contractual tenancy is for the time being in existence; and (iv) that the landlord has given notice to the tenant stating that he requires possession of the property.

6. The tenancy agreement was for an initial period of 6 months, commencing on 2 October 2015 and ending on 2 April 2016. Thereafter, the tenancy continued by tacit relocation for periods of 6 months. In terms of clause 5.2, this could be brought to an end by either party giving 30 days' notice in writing (i.e. by service of a Notice to Quit).

7. The purpose of a notice to quit is to stop tacit relocation from operating. It cannot bring a tenancy to an end at a date arbitrarily selected. To be effective,

the end date specified in a notice to quit must coincide with the ish date. In this case, the notice to quit ought to have specified that the tenancy would end on either 2 October or 2 April of whichever year was appropriate.

8. In fact, the notice to quit specified that the tenancy would end on 2 August 2019. As 2 August 2019 was not an ish, it follows that I consider that the notice to quit is invalid. As such, the contractual tenancy is continuing by tacit relocation for periods of 6 months, and the conditions in section 33(1) of the 1988 Act have not been met.

9. Separately, in terms of Regulation 2 of the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988:-

"Where a notice to quit is given by a landlord to terminate an assured tenancy under the Housing (Scotland) Act 1988 that notice shall contain the information set out in the Schedule to these Regulations."

10. In terms of the Schedule to the 1988 Regulations, the information to be provided amounts to three paragraphs in the following terms:-

"1. Even after the Notice to Quit has run out, before the tenant can lawfully be evicted, the landlord must get an order for possession from the court.

2. If a landlord issues a Notice to Quit but does not seek to gain possession of the house in question the contractual assured tenancy which has been terminated will be replaced by a statutory assured tenancy. In such circumstances the landlord may propose new terms for the tenancy and may seek an adjustment in rent at annual intervals thereafter.

3. If a tenant does not know what kind of tenancy he has or is otherwise unsure of his rights he can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the Legal Aid legislation. A tenant can also seek help from a Citizens Advice Bureau or Housing Advisory Centre."

11. In the Notice to Quit in this case, the applicant has provided the information specified at paragraphs 1 and 3 of the Schedule to the 1988 Regulations, but not the information at paragraph 2. It follows that the Notice to Quit is invalid

insofar as it is non-compliant with Regulation 2 of the 1988 Regulations.

12. Accordingly, for these reasons, this application must be rejected upon the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules and, separately, I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

13. Whilst this application proceeds under Rule 66 and not Rule 65, I nonetheless considered whether the application could have been allowed to continue under Rule 65, with reliance on the AT6 that had been supplied. It is my view that it could not have been, and therefore I have not afforded the applicant the opportunity to amend the application to rely on Rule 65. I reach that view for two reasons:- (i) the Tribunal is prevented, by statute, from granting the order; and (ii) the AT6 is invalid. I shall now explain why.

14. Having determined that the contractual tenancy is continuing, the Tribunal cannot make an order for eviction unless certain criteria are met as specified in section 18(6) of the 1988 Act. Section 18(6) provides as follows:-

"(6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9... Ground 10, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question."

In this case, section 18(6)(a) is satisfied because the grounds for eviction are Grounds 8 and 11. However, the tenancy agreement does not make provision for the agreement to be brought to an end on either of those grounds. As such, section 18(6)(b) is not satisfied.

15. Separately, the Form AT6 is invalid in my view. A Form AT6 is split into four parts. Part 1 specifies the name and address of the tenant. Part 2 specifies the name, address and telephone number of the landlord, and provides which ground or grounds for eviction the landlord intends to rely upon. Part 3 details the reasons why the landlord contends that the ground or grounds in question are satisfied. Part 4 specifies the earliest date when proceedings for eviction may be raised.

16. Turning to the AT6 in this case, I note three specific failures by the applicant which individually are each sufficient to render the AT6 invalid. Firstly, at Part 2, the applicant has specified which Grounds apply by reference to number and a generic heading which ground is said to apply. That is insufficient. What is required at Part 2 is to specify both the Ground number and the full text of the Ground as set out in Schedule 5 to the 1988 Act. Indeed, the AT6 specifies, under the space provided to list the grounds:- "(give the ground number(s) and fully state ground(s) as set out in Schedule 5 of the Housing (Scotland) Act 1988: continue on additional sheets of paper if required)". The applicant has not done so in this case, and so the notice is defective.

17. Secondly at Part 3, the applicant has simply repeated that the reason for seeking eviction is "Tenant has failed to respond to contact and has failed to adhere to a suitable payment plan". That is wholly lacking in specification, and does not explain why either grounds 8 or 11 apply in this circumstance. The principal purpose of this notice is to put the tenant on notice that he or she is in breach of the tenancy agreement and to afford the tenant an opportunity to purge that breach. The AT6 specifies, under the space provided to list the reasons:- "(state particulars of how you believe the ground(s) have arisen: continue on additional sheets of paper if required)". What is required here is to specify, for example, (i) the value of rent arrears, (ii) how many months' arrears that equates to, (iii) the period in which the arrears have accrued, and (iv) the dates that it is alleged that the tenant had been due to pay rent but failed. The information provided by the applicant in this notice gives no notice of the basis of claim. For that reason, it is defective.

18. Finally, and perhaps most crucially, Part 4 of the AT6 is incomplete. The applicant has not specified the earliest date on which proceedings may be raised. As such, the respondent is not given notice of the timescale for compliance. That being the case, the AT6 is defective. For those reasons, an identical application brought under Rule 65 would also have been dismissed under Rules 8(1)(a) and (c).

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 Legal 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 the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

Andrew Upton

Andrew Upton
Legal Member
19 August 2019