



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/19/3301

Re: Property at Flat 3/2, 182 Strathmartine Road, Dundee, DD3 8DG (“the House”)

Parties:

Ms Ann Banks, C/O 7 South Tay Street, Dundee, DD1 1NU (“the Applicant”)

Miss Robyn Leigh Rice, residing at the House (“the Respondent”)

Easylets Ltd, 7 South Tay Street, Dundee, DD1 1NU (“the Applicant’s Representative”)

1. On 15 October 2019, an application was received on behalf of the Applicant. The application was made under Rule 109 of the Chamber Procedural Rules being an application by a private landlord for an eviction order in respect of a house let under a Private Residential Tenancy in terms of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”). Copies of the following documents were enclosed with the application:-
 - (i) Tenancy Agreement dated 26 October 2018;
 - (ii) Notice to Leave dated 12 March 2018, together with Certificate of Service by Sheriff Officer confirming service of same on 18 March 2019;
 - (iii) Section 11 Notice to Local Authority
 - (iv) Rent Statement;

2. The Notice to Leave dated 12 March 2018 specified the end of the notice period as 11 April 2018. Given the commencement date of the tenancy stated in the Tenancy Agreement was 26 October 2018 and the date of service of the Notice to Leave specified in the Certificate of Service was 18 March 2019, it is assumed that there is a typographical error in both the date of and the date stated as being the end of the notice

period in the Notice to Leave and that these dates should be 12 March 2019 and 11 April 2019 respectively.

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 has no prospect of success and is accordingly 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 55(1) of the 2016 Act states as follows:-

"55 – Restriction on applying 6 months after the notice period expires
(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired."

Section 64 of the 2016 Act defines the six month period.

7. Even if my assumption (outlined in paragraph 2 above) is correct and that the date on which the relevant period in relation to the notice to leave expired was intended to be 11 April 2019, rather than 11 April 2018, application would require to have been made to the Tribunal by 11 October 2019 at the latest. The application was not lodged until 15 October 2019 and is therefore outwith the 6 month period specified and defined in the 2016 Act.

8. For the reasons set out above, it seems to me that the application is frivolous as the statutory requirements are not met and there are accordingly no prospects of success.

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.

N. Weir

Legal Member/Chair

28 October 2019

Date