



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/19/3353

Re: 65 Main Street, Bannockburn, Stirling, FK7 8LX ("the Property")

Parties:

Mr Stan Collins ("the Applicant")

Mailers ("Applicant's Representatives")

Mr Chris Balanowski ("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 65 on 18 October 2019. 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) Short Assured Tenancy (**SAT**) commencing 1 February 2017;
 - (ii) Notice to Quit dated 28 June 2019;
 - (iii) Bank Statements showing Rent Arrears;

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(iv) Section 33 Notice (unsigned and undated).

2. The application was considered by the Tribunal and further information was requested by letter 21 October 2019. The Applicant's Representatives were asked:

- (a) To provide AT6;
- (b) To provide evidence of service of the AT6 and copy notice to quit served on Respondent;
- (c) To provide section 11 Notice.

The Applicant's Representatives were given until 28 October 2019 to respond failing which the application may be rejected.

3. The Applicant's Representatives responded by dated 24 October 2019 informing the Tribunal that no AT6 had been served and that no section 11 Notice had been issued to the Local Authority. A copy of the Notice to Quit was attached.

4. The application was considered again by a Legal member on 6 November 2019 and the Applicant's Representatives were requested to confirm whether the application was proceeding under Rule 65 or 66; provide proof of service of the Notice to Quit, AT6 and section 11 Notice.

The Applicant's Representatives were given until 20 November 2019 to respond failing which the application may be rejected.

5. The Applicant's Representatives responded by letter of 20 November 2019 and confirmed that the application was proceeding under Rule 65, the Notice to Quit had been served personally by the landlord, and no section 11 Notice or AT6 had been served.

Reasons for Decision

6. 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."

7. '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”.

8. The application seeks to proceed under Rule 65 and Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 (Act). In order to do so a valid notice to quit must be served upon the Respondent, a notice must be served under section 19 of the Act (an AT6) and a notice must be served on the local authority. The Tribunal has no power to dispense with the requirement to serve an AT6 when Ground 8 of Schedule 5 to the Act is relied upon.
9. In this case the Applicant has not validly served the Notice to Quit upon the Respondent; has not served an AT6 and has not served a section 11 Notice on the Local Authority. The Tribunal could not grant an order for recovery of possession/eviction in the circumstances.
10. 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 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

28 November 2019

Legal Member/Chair

Date