



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/19/3903

Re: 3/3 Duke Street, Hawick, TD9 9PY ("the Property")

Parties:

DAB Housing ("the Applicant")

Mr Scott Loudon ("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 6 December 2019. The grounds for possession/eviction were stated to be Ground 8. The following documents were enclosed with the application:
 - (i) Short Assured Tenancy (**SAT**) commencing 17 July 2017;
 - (ii) AT6 dated 6 September 2019 which stated "Non Payment of rent. Ground 8" as the basis for recovery of possession and did not state the earliest date that the landlord could raise proceedings under the Act;
 - (iii) Schedule of rent Arrears;
 - (iv) Letter (undated) giving notice of termination of lease.

2. The application was considered by the Tribunal and further information was requested by letter 18 December 2019. The Applicant was asked:

- (a) To resubmit the application in the name of those with title to sue and provide written confirmation of authority to act;
- (b) Provide a Notice to Quit duly served on the tenant;
- (c) Address the Tribunal on why it is considered that the AT6 is competent where the earliest date proceedings may be raised has not been completed and the grounds for eviction are not fully specified;
- (d) To provide proof of service of the AT6.

The Applicant was given until 1 January 2020 to respond failing which the application may be rejected.

3. The Applicant responded by email of 20 December 2019 confirming that the Applicant was a partnership; attaching a scan of the AT6; confirming that the AT6 specified Ground 8 and that both the AT6 and Section 33 Notice (a copy of which was attached) were placed through the tenant's letterbox on 7 September 2019. The applicant's response did not provide a copy of a valid Notice to Quit nor did it deal with the point that the AT6 did not have the earliest date proceedings may be raised completed.

4. The application was considered again by a Legal Member on 24 December 2019.

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 application seeks to proceed under Rule 65 and Ground 8 under Schedule 5 to the Housing (Scotland) Act 1988 (Act). In order to proceed under Ground 8 a valid notice under section 19 of the Act must have been served. A valid section 19 Notice (AT6) must give notice of the Grounds the application is under and the earliest date proceedings may be raised. Where the application is under Ground 8 the Tribunal has no discretion to dispense with the notice requirement. The AT6 relied upon by the Applicant does not specify the earliest date proceedings may be raised. It accordingly does not give the Respondent the statutory notice required. The AT6 is invalid. Furthermore, it does not appear that the tenancy has been validly terminated. The purported undated letter that the Applicant seeks to rely upon as a Notice to Quit does not contain the prescribed information in terms of The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 (as amended). The purported Notice to Quit is invalid and has not served to terminate the tenancy.

8. 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

24 December 2019

Legal Member/Chair

Date