



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/20/1265

Re: 2 Fyne Court, Hamilton, ML3 8UH ("the Property")

Parties:

Mr Ali Liaquat (Applicant)

Mr Robert Nicholas, Ms Emma Donaldson (Respondent)

LKW Solicitors (Applicant's Representative)

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 rejected 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 originally under Rule 65 on 10 June 2020. The grounds for possession/eviction were stated to be Grounds 8, 11 and 13 of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**). The following documents were enclosed with the application:

- (i) Short Assured Tenancy (**SAT**) commencing 11 April 2016 until 10 April 2017 continuing thereafter until terminated by either party giving not less than 2 months' notice;
- (ii) AT5 dated 11 April 2016;
- (iii) AT6 dated 6 April 2020 specifying the grounds for possession as being Grounds 8, 11 and 13;

- (iv) Notice to Quit dated 6 April 2020 and specifying 16 May 2020 as the date to quit;
- (v) Royal Mail Track and Trace;
- (vi) Section 11 Notice to local authority;
- (vii) Rent Statement;
- (viii) Email correspondence between the Parties.

2. The application was considered by the Tribunal and further information was requested by letter of 29 June 2020. In particular the Applicant was requested to (amongst others) comment on the validity of the Notice to Quit as the date specified did not coincide with an *ish* or end date of the tenancy and the prescribed information had not been included. The Applicant responded to that point by email of 13 July 2020 in the following terms:

In respect of the notice to quit, there is no set form which is prescribed by the tribunal and therefore there is no correct way to complete and serve this. The notice to quit is clear to state that the tenant is asked to leave the property and the schedule explains that the Landlord is entitled to raise this matter in court after the notice has been served. I appreciate that the *ish* date has not been specified, however statute does not specify that this date needs to be stated. The schedule also specifies that the tenant should seek legal advice and deal with this matter. If the tenant had sought legal advice then a reasonable representative would have still been able to assess the *ish* date. The tenancy agreement and AT6 has also been attached which specifies the *ish* date in this. The tenant has also refused to comply with the AT6 form. Therefore, there is no basis for the tenants to state that they were not aware of relevant dates.

Reasons for Decision

3. 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."

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"*.

5. The application seeks to proceed under Rule 65 using Grounds 8, 11 and 13 of Schedule 5 to the Act. In order to rely upon these Grounds the Applicant must have

validly terminated the SAT. The *ish* date of the tenancy is the 10th April and 2 months' notice must be given of termination. The Notice to Quit states 16 May 2020 as the date by which the Respondent should quit and remove - which was patently wrong. Furthermore, the Notice to Quit was dated 6 April 2020 and gave less than 2 months' notice. The tenancy was not validly terminated and continues as a consequence.

6. The Notice to Quit did not contain the statutory information specified in ***The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 (Regulations)***. Failure to incorporate the prescribed information renders the Notice to Quit invalid.

7. 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

5 August 2020

Legal Member/Chair

Date