

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/2532

Re: 41 Hareshaw Gardens, Kilmarnock, KA3 2AT ("the Property")

Parties:

Mr Michael Rooney ("the Applicant")

Mr John Scott ("the Respondent")

The McKinstry Company ("Applicant's Representatives")

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 under Rule 65 on 14 August 2019. The grounds for possession/eviction were stated to be Grounds 8, 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 (Act). The following documents were enclosed with the application:

- (i) Assured Tenancies (AT) issued 11 November 2015, 11 November 2016 and 9 November 2017 for periods of 12 months and terminable by 6 months' notice;

Alan Strain

- (ii) AT6 dated 4 July 2019;
- (iii) Schedule of Rent Arrears;
- (iv) Section 11 Notice;
- (v) Royal Mail RD slip.

2. The application was considered by the Tribunal and further information was requested by letter of 26 August 2019. The Applicant's Representatives responded by email of 2 September 2019 and provided the requested information.

3. The application was considered again by a Legal member on 17 September 2019 and the Applicant's Representatives were requested to provide a copy of the Notice to Quit and comment on the position that the AT did not comply with section 18(6) of the Act (**Royal Bank of Scotland v Boyle 1999 Hous. LR 63**). The Applicant's Representatives responded by email of 30 October 2019 confirming that no Notice to Quit had been served.

Reasons for Decision

4. 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."

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. 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".

6. The application seeks to proceed under Rule 65. In order to do so the tenancy must have been validly terminated and tacit relocation not be operating. Further the AT does not expressly incorporate the Grounds within Schedule 5 to the Act as a basis for termination/recovery of possession. Service of an AT6 alone would be insufficient to enable the grant of an order to repossess the Property.

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

Alan Strain

that there is good reason why the application should not be accepted. The Applicant has failed to provide necessary information requested within a reasonable time. 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

7 November 2019

Legal Member/Chair

Date