



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/19/3365

Re: 21 Dasher Gardens, Ardrossan, KA22 7NN ("the Property")

Parties:

Mr Jamie Stell ("the Applicant")

Cunningham Properties ("Applicant's Representatives")

Miss Caroline Campbell ("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 21 October 2019. The grounds for possession/eviction were stated to be "Landlord intends to sell the Property". The following documents were enclosed with the application:
 - (i) Short Assured Tenancy (**SAT**) commencing 29 August 2013;
 - (ii) AT6 dated 26 July 2019 which sought to recover possession on the basis the landlord wished to sell the Property;
 - (iii) Notice to Quit dated 26 July 2019;

- (iv) Royal Mail Certificate of Posting;
- (v) Letter of Engagement with Estate Agents dated 30 September 2019;
- (vi) Section 11 Notice.

2. The application was considered by the Tribunal and further information was requested by letter 6 November 2019. The Applicant's Representatives were asked:

- (a) To provide the statutory Ground under Schedule 5 to the 1988 Act under which possession was sought;
- (b) To provide reasoning as to why it was considered 29 September 2019 was the end of the tenancy as provided for in the Notice to Quit.

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

3. The Applicant's Representatives did not respond and the Tribunal wrote once again on 3 December 2019 and gave them until 17 December 2019 to do so.

4. No response was received. The application was considered again by a Legal member on 19 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 without specifying any Ground under Schedule 5 to the Housing (Scotland) Act 1988 (**Act**). Furthermore, it does not appear that the tenancy has been validly terminated. The SAT runs from 29 August to 29 February each year. The Applicant has not given any basis for 29

September as being an ish date. The Tribunal could not grant an order for recovery of possession/eviction in the circumstances.

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

Legal Member/Chair

19 December 2019

Date