



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988 and Rule 8 of the First-tier tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the Procedural Rules)

Chamber Ref: FTS/HPC/EV/20/1276

Re: Property at 17/8 Timberbush, Edinburgh, EH6 6QH (“the Property”)

Parties:

Mr Richard Flinn, C/O DJ Alexander Lettings, 1 Wemyss Place, Edinburgh, EH3 6DH (“the Applicant”)

Mr David Maybank, 17/8 Timberbush, Edinburgh, EH6 6QH (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application is rejected.

1. On 15th June 2020, an application was received from the Applicant. The application was made under Rule 66 of the Procedural Rules being an application by a private landlord for an order for possession upon termination of a short-assured tenancy. The following documents were enclosed with the application.
 - (a) Tenancy Agreement and AT5
 - (b) Notice to Quit and section 33 Notice
 - (c) Letter of Authority for Representative to act
 - (d) Proof of delivery of Notice
 - (e) Section 11 Notice to Edinburgh Council

2. By letter dated 23rd June 2020, the Tribunal requested further information from the applicant regarding the Notice to Quit and the date specified in the Notice which is not an

ish date or end date of the tenancy. The Applicant responded by e-mail on 2nd July 2020 to the Tribunal and stated that the Notice to Quit was issued on 13th March 2020 which is the ish date and the vacate date is 14th May 2020 which is two months' notice.

Case Management Discussion (CMD)

3. A CMD took place by teleconference at 2.00 pm on 21st September 2020. The Applicant was represented by Miss Dyina Greeney Debt Recovery Administrator with D.J. Alexander. The Respondent was present on the teleconference call.

4. The Legal Member of the Tribunal explained the purpose of the CMD. She pointed out the difficulties in the date in the Notice to Quit to Ms. Greeney and asked whether she wished an opportunity to take legal advice. Ms. Greeney said that there would be not much use and she would need to issue a new Notice.

Decision

5. The tribunal considered the Application in terms of Rule 8 of the 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;

(b) the dispute to which the application relates has been resolved;

(c) they have good reason to believe that it would not be appropriate to accept the application;

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar

application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(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. After consideration of the application, the attachments and correspondence from the Applicant, the tribunal considers 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.

REASONS FOR 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*". It is that definition which the tribunal requires to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

8. The Notice to Quit, which is dated 13th March 2020, is invalid in respect that it specifies a date to leave the premises of 14th May 2020. That termination date is not an ish of the tenancy agreement, as that date is required to be in order to constitute an effective notice. The Short-Assured Tenancy Agreement provides at paragraph 1 that the rental period will be from 13th October 2004 and will run until 13th April 2005. It goes on to state that if neither party validly terminates the let, this tenancy will tacitly relocate for a period of two months

and for periods of two months at a time thereafter until termination. Accordingly, as the agreement was not brought to an end on 13th April 2005, the agreement continued upon the legal presumption of tacit relocation for further periods as specified in the original lease agreement. That being so, the term of the lease falls on the 13th April or June or August or October or December or February of each year, and the Notice to Quit by the 14th May 2020 (which is not a term date) is ineffectual.

9. The Notice to Quit required to end the lease on a date which is a term of the lease, but the date specified of 14th May 2020 was not a term of the lease (see Rennie & Ors - Leases S.U.L.I. (1st Ed) paragraphs 22-46 to 22-49, Gloag & Henderson - The Law of Scotland (14th Ed.) paragraph 35-25 and 35-26, and section 38 of the Sheriff Courts (Scotland) Act 1907). Upon that basis the Notice to Quit is invalid.

10. For the above reason, this application has no prospect of success and must be rejected upon the basis that it is frivolous.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.
If you disagree with this decision: -

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, 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. Information about the appeal procedure can be forwarded to you on request.

Y McKenna

Yvonne McKenna
Legal Member
Dated 21st September 2020

