



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/20/1865

Re: 53 Torbeith Gardens, Hill Of Beath, Cowdenbeath, KY4 8DX ("the Property")

Parties

Mr Ross Michie (Applicant)
Mrs Patricia Macgregor (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 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 66 on 3 September 2020. The grounds for possession/eviction were stated to be that the Applicant wished to move back in to the Property and termination of a Short Assured Tenancy (**SAT**) had been highlighted on the application form (Rule 66). The following relevant documents were enclosed with the application:

- (i) Short Assured Tenancy (**SAT**) commencing 1 August 2017 until 1 February 2018 and then renewing thereafter on the same terms and conditions;
- (ii) Notice to Quit dated 27 April 2020 and specifying 31 August 2020 as the date to quit; and
- (iii) Section 33 Notice dated 27 April 2020 specifying 31 August 2020 as the date of termination of the tenancy.

2. The application was considered by the Tribunal and further information was requested by letter of 21 September 2020. In particular the Applicant was requested to (amongst others) comment on the validity of the Notice to Quit and as the date specified did not coincide with an *ish* or end date of the tenancy. The Applicant responded by email of 22 September 2020 stating that he thought after the initial 6 month period the SAT was a rolling month to month contract.

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 66. In order to do so the tenancy must have been validly terminated and tacit relocation not be operating. The *ish* date of the tenancy is 1 August/1 February each year. The Notice to Quit and section 33 Notice both stated 31 August 2020 as the *ish* date which was patently wrong. The tenancy was not validly terminated and tacit relocation continues to operate.

6. 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.

13 October 2020

Legal Member/Chair

Date