

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/23/1020

Re: 56 Paisley Road, Barrhead, Glasgow, G78 1NN ("the Property")

Parties

Mr Ronnie Flood (Applicant)
Ms Lisa McSporran (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.

Background

1. The application was received by the Tribunal under Rule 65 on 29 March 2023.
2. The tenancy agreement (**tenancy**) commenced on 1 October 2012 to 30 September 2013. The tenancy renewed by way of tacit relocation each year on 1 October.
3. The Applicant purported to terminate the tenancy by serving a Notice to Quit dated 8 September 2021 which did not specify an "ish" date. The Notice to Quit specified 1 March 2022 as the date to quit. The tenancy was not validly terminated and continued.
4. The Applicant did not specify which Grounds under Schedule 5 to the Housing (Scotland) Act 1988 he intended to rely despite being requested to do so by the Tribunal by email on 17 April 2023.
5. The Applicant produced a Form AT6 dated 15 November 2022 which did not specify the numbered Grounds under Schedule 5 to the Housing (Scotland) Act 1988. In any

event the tenancy did not specify that it could be terminated under any of the Grounds under Schedule 5 to the Housing (Scotland) Act 1988.

Reasons for Decision

6. 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."

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".*

8. The application seeks to proceed under Rule 65. In order to do so the Applicant must have validly terminated the tenancy. The tenancy commenced on 1 October 2012 to 30 September 2013. The tenancy renewed by way of tacit relocation each year on 1 October. The Notice to Quit did not specify an "ish" date. The Notice to Quit specified 1 March 2022 as the date to quit. The tenancy was not validly terminated and continued.

9. The tenancy did not provide for termination and recovery of possession under the Grounds specified in Schedule 5 to the Housing (Scotland) Act 1988.

10. In light of the above the Tribunal concluded that that the application had no prospect of success. The Tribunal could not grant the order sought when the contractual tenancy had not been validly terminated by a valid notice to quit. Furthermore, the Applicant could not rely upon the AT6 given that the Grounds under Schedule 5 to the Housing (Scotland) Act 1988 had not been incorporated into the tenancy. As the tenancy did not expressly incorporate the grounds specified in Schedule 5 to the Housing (Scotland) Act 1988 and provide that the tenancy could be terminated on any of the grounds contained (***Royal Bank of Scotland v Boyle 1999 Hous LR 63***) the Tribunal could not grant the order sought on the basis only of having served an AT6. 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. 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.

A Strain

15 May 2023

Legal Member/Chair

Date