



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/22/1639

Re: 12 Munnoch Crescent, Ardrossan, KA22 7PW ("the Property")

Parties

Mr Michael Welsh (Applicant)

Mrs Pauline MacFarlane, Mr Lee MacFarlane (Respondent)

Move2 Lettings Ltd (Applicant's Representative)

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 originally under Rule 66 on 27 May 2022. The grounds for possession/eviction were stated to be termination of a short assured tenancy under the Housing (Scotland) Act 1988 (**Act**). The following documents (of relevance to this decision) were enclosed with the application:

- (i) Short Assured Tenancy (**SAT**) commencing 16 May 2017 for a period of 12 months and then continuing month to month; and

- (ii) Notice to Quit and section 33 notice dated 17 November 2021 specifying that the tenancy would terminate on 19 May 2022.

2. The application was considered by the Tribunal and further information was requested by letter of 27 June 2022. In particular the Applicant was requested to provide the following further information:

“Before a decision can be made, we need you to provide us with the following: 1. Can you please provide a mandate from the applicant authorising you to act of him in these proceedings? 2. We note that there is a joint owner in the Property namely Ms Rebecca Welsh can you advise if she wishes to be a joint applicant or if not please provide her written consent to the applicant letting out the property and raising this action. 3. Sections 5 and 6 of the application have not been completed in particular we require s5 to be completed indicating the grounds of possession. 4. With respect to service of the Notice to Quit and S33 notice you have provided a certificate of posting but can you also now provide a track and trace receipt? 5. Is there a fresh AT5 in respect of the lease you are relying on and if so please provide it. If not please explain why there is a second tenancy and confirm if you wish to rely on the AT5 lodged with the application? 6. With respect to the Notice to quit to be valid it has to be served ending the tenancy on an ish or termination date. As the lease started on 16th May 2017 and was for 12 months the first termination or ish date would have been 16th May 2018 and each month thereafter. Please explain how the notice to quit can be valid when it appears to try and terminate the lease on 19th May which does not appear to be an ish date and by which time the lease would have tacitly relocated for another month? Please provide legal submissions when responding to this point. You may wish to take legal advice as ish dates can be complex.”

3. The Applicant replied by email of 11 July 2022 in the following terms (in so far as was relevant to the Decision):

“Please find below the answers to your questions and also attached are the documents requested. 1. Email attached 2. Email attached 3. Natural end of tenancy and landlord is in a position he must sell the property once tenants have vacated. 4. Receipt attached 5. AT5 was not renewed as not required to be renewed 6. 2 days’ notice was added to allow for delivery.”

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 66. In order to rely upon these Grounds the Applicant must have validly terminated the SAT. The commencement date of the tenancy was 16 May 2017 for a period of 12 months (16 May 2018) then continuing monthly thereafter until terminated. The Notice to Quit states 19 May 2022 as the date by which the Respondent should quit and remove. The 19 May 2022 was not an "ish" of the tenancy. The tenancy was not validly terminated at its "ish" and continues as a consequence.

7. As the tenancy has not been validly terminated and the application premature 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.

A Strain

9 August 2022

Legal Member/Chair

Date