



Decision with Statement of Reasons of H Forbes, 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/CV/22/2448

Re: 11 Cogan Place, Barrhead, G78 1QZ ("the Property")

Parties:

Maureen Hamilton ("the Applicant")

Ray McGoldrick ("the Respondent")

Tribunal Member:

Ms H Forbes (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. An application was received by the Tribunal under Rule 70 on 21st July 2022, with associated documents.
2. The application was considered by a legal member and by letter dated 19th August 2022 sent to the Applicant's representative, the following information was requested:
 1. You have used the wrong form and rule number for the application. This would appear to be a Rule 66 application which must be made on a Form E, which is available on our website, however, you should have regard to the points made below before resubmitting the application form. It may be the case that you wish to withdraw this application, serve the correct notices, and resubmit when the period of notice has expired.

2. In order to terminate a contractual tenancy, as required before a Rule 66 application can be made, you must serve a Notice to Quit which terminates the contractual tenancy on an ish date of the tenancy, and contains certain information set down in law. If you have served a valid Notice to Quit, giving the correct period of notice as required in law, please provide a copy. The Tenancy Agreement Termination letter provided does not constitute a valid notice for these purposes.

3. The section 33 notice is undated and unsigned, therefore, it is impossible to ascertain whether the correct period of notice was given.

4. You have not provided evidence of service of the section 33 notice, or any Notice to Quit, on the Respondent.

5. You have not provided a copy of the tenancy agreement.

6. The section 11 notice to the local authority is incomplete as you have not indicated the legislation under which you are proceeding, and you have not provided evidence of service of the section 11 notice upon the local authority.

7. You have not provided a form AT5, which is served before the tenancy commences. This is required for a Rule 66 application.

You may wish to take legal or other appropriate advice on the matters mentioned above.

3. By email dated 22nd August 2022, the Applicant's representative lodge a further application form amending the application to rule 66, stating that the application was made in terms of ground 1 and providing section 11 notice with evidence of service, copy section 33 notice which was signed but not dated, short assured tenancy agreement purportedly commencing on 1st November 2021, copy tenancy termination letter and Form AT5.

4. The application was considered by a legal member and the following information requested by letter dated 15th September 2022, requesting a response by 29th September 2022:

1. Thank you for your response and we note you wish to change the application to an application under rule 66 for eviction. As we cannot now change the rule number it remains as a CV reference rather than an Eviction reference.

2. With regard to the revised application can you please address the following further queries:-

a. In your application your refer to ground 1 but appear to be relying on s33 of the 1988 Act please clarify and amend if necessary.

b. You have provided a tenancy agreement which states it starts on 1st November 2021 which would make it a private rented tenancy which is brought to a termination in a different way than by service of a notice to quit and s33 notice which is for tenancies under the Housing Scotland Act 1988 however other documents refer to the tenancy starting in 2015. Can you please provide a copy of the original tenancy agreement that was entered into in 2015 and confirm if the tenant has remained there ever since or if the tenancy was broken and replaced with this latest tenancy agreement?

c. As mentioned in our last letter before a Rule 66 application can be made, you must serve a Notice to Quit which terminates the contractual tenancy on an ish date of the tenancy, and contains certain information set down in law. The Notice of termination letter does not constitute a valid notice for these purposes, it does not refer to the date the tenant has to leave nor does it contain prescribed information please advise why you believe this is valid and provides the foundation for an eviction action under S33 if the contractual tenancy is not ended by a valid notice to quit?

d. The section 33 notice is undated and unsigned, therefore, it is impossible to ascertain whether the correct period of notice was given and we still do not appear to have evidence of service of the section 33 notice, or any Notice to Quit, on the Respondent. Please provide evidence of how and when these were served on the Respondent such as proof of recorded delivery?

e. Please also let us have a mandate authorising you to act for the Applicant.

3. You may wish to take legal advice on this as matters relating to evictions and notices to quit can be complex.

5. By email dated 19th September 2022, the Applicant's representative responded as follows:

1. Noted as an amendment.

2. a) this was an oversight I am of course relying on section 33 I have attached amended form E for clarification.

b) the document produced was revised at this date the original short term assured tenancy commenced on the 1st October 2015 and was reviewed at intervals to amend the rent structure. The tenant has been in occupation of the property since October 2015 and has been a reliable tenant throughout this period. The documents were reviewed only for rent review. I have enclosed the original document which was issued in October 2015 (SEE DOCUMENT REF 7)

c) I previously submitted document 5 which states the tenant should be removed by 01/07/22 I understand that under rule 66 I am required to submit an application that details the name address and registration of the landlord the name address and profession of the representative (not applicable since the application was by the landlord. the name and address of the tenant

d) In my understanding this notice complies with the requirements of the section 33 and the document referred above document 5 is signed I have also enclosed a signed copy of correspondence from the respondent as receipt of termination notice. (SEE DOCUMENT 8)

e) I have also attached a signed mandate from my wife confirming I am authorised to act on her behalf (SEE DOCUMENT 9)

6. The application was considered by a legal member on 25th October 2022.

Reasons for Decision

7. 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."

8. '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".*

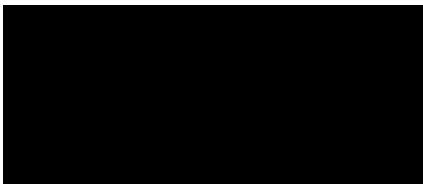
9. The application cannot proceed under Rule 66 as no valid Notice to Quit has been served upon the Respondent to terminate the contractual tenancy and prevent tacit relocation from operating, as required by section 33 of the Housing (Scotland) Act 1988. The termination letter provided to the Respondent does

not constitute a valid Notice to Quit. It does not include the prescribed information as required in terms of The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988. Furthermore, the termination letter does not give the 4 weeks' notice required in a Notice to Quit in terms of Section 112 of the Rent (Scotland) Act 1984.

10. 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.



Legal Member/Chair

25th October 2022
Date