



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/22/0555

Re: 18 Harcourt Road, Aberdeen, AB15 5NZ ("the Property")

Parties

**Mr Kenneth John Clark, Mrs Linda Clark (Applicant)
Mrs Jessie Ann Scarpellino (Respondent)**

Fraser & Mulligan (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 under Rule 65 on 24 February 2022.
2. The tenancy agreement (**tenancy**) commenced on 1 May 2016 until 30 April 2017. The tenancy continued by tacit relocation for periods of 12 months thereafter. The tenancy was an assured tenancy.
3. The Applicant purported to terminate the tenancy by serving a Notice to Quit which specified the "ish" date as 8 January 2022.

4. The Tribunal considered the application and wrote to the Applicant on 11 March 2022 asking “please consider the validity of the notice to quit, as agents will be aware a notice to quit requires to terminate the contractual tenancy on an ish date. It appears to the legal member, given the terms of the lease, that this lease only renews on a once yearly basis on 1 May and ends on 30 April each year. It appears therefore that the ish date in this lease is 30 April (with the next ish date being 30 April 2022) Given this it would appear that 8 January 2022 (the date in the notice to quit) is not an ish date and the notice to quit is therefore invalid. Please provide your comments as to whether you consider this notice to quit is valid and if you do, please provide legal authority for this.”

5. The Applicant responded by letter of 22 March 2022 stating that the notice to quit was valid as recovery of possession was being sought under Grounds 8, 11 and 12 of 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."

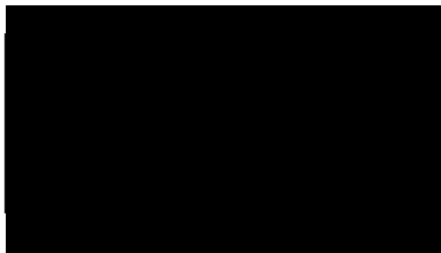
7. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in ***R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env. L.R. 9***. At page 16, he states: - *"What the expression means in this context is, in my view, that the court considers the application to be 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 *ish* date of the tenancy is the 30 April each year as the tenancy continues by tacit relocation each year. The Notice to Quit states 8 January 2022 as the date by which the Respondent should quit and remove - which was patently wrong. The tenancy was not validly terminated and continues as a consequence. Furthermore, 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.

9. 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.



Legal Member/Chair

12 April 2022

Date