



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/22/3697

Re: 13a Union Place, Dundee, DD2 1AA (Property)

Parties

Mr Michael Barclay, Mrs Julie Barclay (Applicant)

Mrs Ann Gilmour (Respondent)

Easylets 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 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. The application was received by the Tribunal under Rule 109 on 7 October 2022.
2. The application was considered by the Tribunal and further information was requested by letters of 13 January 2023 and 10 March 2023 as follows:

"Despite the date of signing on the Notice to Leave, it was not served until 30th May 2022. It would appear, therefore, that adequate notice, in terms of the legislation, was not given. The period of notice

is 84 days, and the period given would appear to fall short. Furthermore, the tenancy agreement only provides for service by email.

Please provide your written representations as to the validity of the Notice to Leave. The Applicant may wish to consider withdrawing the application and serving a further Notice to Leave in the correct manner and giving the correct period of notice. Please reply to this office with the necessary information by 27 January 2023. If we do not hear from you within this time, the President may decide to reject the application.”

And

“Further to the Tribunal’s request for further information dated 13 January 2023, to which no reply was received, now please either confirm that the application is withdrawn or address the issue raised in the letter. Please reply to this office with the necessary information by 24 March 2023. If we do not hear from you within this time, the President may decide to reject the application.”

No response was received to any of the requests for information.

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. Rule 109 of the Tribunal Procedure Rules provides:

Application for an eviction order

109. Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the application must—

(a)state—

- (i) the name, address and registration number (if any) of the landlord;
 - (ii) the name, address and profession of any representative of the landlord;
 - (iii) the name and address of the tenant (if known); and
 - (iv) the ground or grounds for eviction;
- (b) be accompanied by—
- (i) evidence showing that the eviction ground or grounds has been met;
 - (ii) a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act; and
 - (iii) a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and
 - (iv) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and
- (c) be signed and dated by the landlord or a representative of the landlord.

The Applicant has failed to provide necessary information, specifically a valid notice to leave. The Tribunal could not grant the order sought.

6. 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.

14 April 2023

Legal Member/Chair

Date