



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/22/2832

Re: 191 Kingsacre Road, Glasgow, G44 4LX ("the Property")

Parties

**Mr Stephen Farquhar (Applicant)
Ms Carol Anne Gunn (Respondent)**

Dial A Home (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 66 on 12 August 2022. The Applicant was unable to produce a tenancy agreement or AT5 and the date to quit the Property was blank on the Notice to Quit.

2. The application was considered by the Tribunal and further information was requested by letter of 13 October 2022 as follows:

"1. The Notice to Quit contains no dates by which the tenant is required to vacate the property and you are unable to produce a tenancy agreement and an AT5. You have been asked to provide information with regard to why the Notice to Quit is valid."

3. The Applicant responded on 19 October 2022 informing the Tribunal:

"Good afternoon The accompanying section 33 has the notice to end date on it ?"

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 do so the tenancy must have been validly constituted as a short assured tenancy and terminated at its end. The Applicant was unable to provide a form AT5 or a tenancy agreement. The Notice to Quit did not specify a date to quit.

The tenancy has not been validly constituted as a short assured tenancy nor has it been validly terminated and continues. As the tenancy has not been terminated the Tribunal cannot grant the order sought. The Tribunal has no discretion in the matter.

7. 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

14 November 2022

Date