

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision under Rule 38(3) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (contained in Schedule 1 of the Chamber Procedure Regulations 2017 (SSI No 328)) (“the Procedure Rules”) in relation to a request for permission to appeal under section 46(3) (a) of the Tribunals (Scotland) Act 2014

In connection with

Chamber Reference FTS/HPC/EV/20/1089

796 Springfield Road, Flat1/1, Parkhead, Glasgow. G31 4HL (“the Property”)

The Parties

Constance Flynn, 5 Maxwell Avenue, Baillieston, Glasgow, G69 6HH (“the Applicant”)

Olabode B Eddo, 796 Springfield Road, Flat 1/1, Parkhead, Glasgow, G31 4HL (“the Respondent”)

Tribunal member:

Josephine Bonnar (Legal Member)

Decision

The Tribunal refuses permission to appeal in terms of Rule 38 of the Procedure Rules.

Background

1. On 16 April 2020 the Applicant lodged an application for an order for recovery of possession of the property in terms of Rule 65 of the Procedure Rules and Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant lodged a number of documents in support of the application including copy tenancy agreement, AT6 Notice and Notice to Quit. The application stated that the order for possession was sought on grounds 8, 11 and 12 of Schedule 5 of the 1988 Act.

2. On 20 May 2020 the Legal Member rejected the application under Rule 8(1)(a) of the Procedure Rules, on the grounds that the application was frivolous, misconceived with no prospect of success. The Legal Member determined that the Notice to Quit was invalid, that it did not give the required period of Notice and that the Applicant could not proceed in terms of Section 18(6) of the 1988 Act, because the terms of the tenancy agreement did not make provision for it to be brought to an end on the grounds relied on. (Section 18(6)(b) of the 1988 Act). The decision was issued to the Applicant on 21 May 2020.
3. By email dated 24 May 2020 the Applicant applied to the Tribunal for permission to appeal the decision. The email states, "I wish to appeal this decision on two points. 1) The tenancy was not continued by tacit relocation as it states at the end of page two of the tenancy agreement that it will continue on a month to month basis. 2) The notice to quit is correct as the notice period is only required to be 14 days when 3 months rent is outstanding". The Applicant also asked whether he required to complete a form to request permission to appeal. By response dated 28 May 2020 the Tribunal advised the Applicant that no form required to be completed but that the Applicant required to comply with Rule 37 of the Procedure Rules. No further representations were received from the Applicant.

Reasons for decision

4. Section 46 Tribunal (Scotland) Act 2014 states -

"(1) A decision of the First-tier Tribunal in any matter in a case before the Tribunal may be appealed to the Upper Tribunal.

(2) An appeal under this section is to be made –

- (a) By a party in the case.
- (b) On a point of law only.

(3) An appeal under this section requires the permission of –

- (a) The First-tier Tribunal, or
- (b) If the First-tier Tribunal refuses its permission, the Upper Tribunal.

(4) Such permission may be given in relation to an appeal under this section only if the First-tier Tribunal or (as the case may be) the Upper Tribunal is satisfied that there are arguable grounds for the appeal."

5. Regulation 37 of the Procedure Rules states -

"(1) A person must make a written application to the First-tier Tribunal for permission to appeal.

(2) An application under paragraph (1) must –

- (a) Identify the decision of the First-tier Tribunal to which it relates;
- (b) Identify the alleged point or points of law on which the person making the application wishes to appeal; and
- (c) State the result the person making the application is seeking.

- 6. Section 2 of the Scottish Tribunals (Time Limits) Regulations 2016 provides that an application for permission to appeal must be received within 30 days of the date the decision was sent to the Applicant. The application is timeous.
- 7. The Applicant identifies the decision to which the application relates, being the decision dated to reject the application dated 20 May 2020. Although he does not specifically state the result he is seeking, it is evident that the Applicant is seeking to have the application accepted by the Tribunal. The Applicant identifies two grounds of appeal.

Ground 1 – the Notice to Quit is valid because tenancy continued on a month to month basis in terms of the tenancy agreement

- 8. The Applicant states that the Legal Member's conclusion that the Notice to Quit is invalid is wrong and is based on a misinterpretation of the tenancy contract. This resulted in the Legal Member incorrectly identifying the tenancy ish date.
- 9. The Legal member is satisfied that a point of law has been identified. However, the Legal Member is not satisfied that the point raised is an "arguable" ground of appeal, as required by Section 46(5) of the 2014 Act. It is conceded that the Legal Member failed to note that the last clause of the tenancy agreement made provision for the tenancy to continue on a month to month basis, if not terminated by either party at the ish. As a result, the conclusion that the tenancy continued by tacit relocation with an ish every May and November was incorrect. However, this error does not affect the conclusion that the Notice to Quit is invalid. As the initial term of the tenancy was 7 November 2016 to 8 May 2017, the effect of the said clause is that an ish date occurs on the 8th of each month, after the initial term. The Notice to Quit lodged purports to terminate the tenancy contract on 20th March 2020. This is not an ish. As a result, the Notice to Quit is invalid and the tenancy contract has not been terminated. A landlord can only obtain an order for possession, without first terminating the tenancy contract, if Section 18(6) of the 1988 Act applies. The tenancy agreement lodged with the application does not meet the requirements of Section 18(6)(b). As a result, the application cannot proceed under this section. The Applicant cannot establish that the tenancy contract has been terminated, as required by the 1988 Act. The Applicant does not have an arguable ground of appeal in relation to ground 1. Permission to appeal is refused.

Ground 2 – the period of notice required in relation to the Notice to Quit is two weeks, therefore the notice is valid.

10. The Legal member is satisfied that a point of law has been identified but not satisfied that the point raised is an “arguable” ground of appeal as required by Section 46(5) of the 2014 Act. The Applicant appears to have confused two different legal requirements. Section 19 of the 1988 Act requires service of a Notice in advance of an application for an order for possession. This notice (the AT6 Notice) requires either 2 weeks or two months’ notice to be given to a tenant, depending on the ground for possession. The Applicant is correct in stating that the grounds relied on in the application require only 2 weeks’ notice. However, this period of notice relates only to the AT6 Notice. As stated in the Legal Members decision of 20 May 2020, the period of notice required for a Notice to Quit is prescribed by Section 112 of the Rent (Scotland) Act 1984. This period is “at least 4 weeks”. A Notice to Quit which gives less than 4 weeks’ notice is automatically invalid for the purposes of an application under the 1988 Act. As the Applicant cannot proceed in terms of Section 18(6) of the 1988 Act, a valid Notice to quit, giving the required period of notice, is necessary. The Applicant does not have an arguable ground of appeal in relation to Ground 2. Permission to appeal is refused.

APPEAL PROVISIONS

A landlord aggrieved by the decision of the tribunal may seek permission to appeal to the Upper Tribunal for Scotland on a point of law only. That party must seek permission to appeal within 30 days of the date the decision was sent to them. The request for permission to appeal must be in writing and you may wish to consult the Scottish Courts and Tribunals Service website which includes an application form with information on the details required.



**Josephine Bonnar, Legal Member
8 June 2020**

