



Decision 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/22/0314

Re: Property at 9 Brington Place, Dundee, DD4 7QF (“the Property”)

Parties

Mr Colin Will, Mrs Stephanie Will (Applicant)

Mr Stuart Roxburgh, Ms Sheryl Stewart (Respondent)

1. On 4 February 2022 an application was received from the Applicant. The application was made under Rule 66 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under a Short Assured Tenancy. The following documents were enclosed with the application:-
 - (i) Tenancy Agreement;
 - (ii) AT5
 - (iii) Notice to Quit;
 - (iv) Section 33 Notice;
 - (v) Notice to Local Authority section 11 Notice;

2. The Tenancy Agreement was in the name of the Applicant and the Respondent. The Tenancy Agreement was signed and dated 24 April 2013. The Tenancy Agreement states that tenancy shall start on 30 April 2013. In terms of the tenancy agreement the duration of the tenancy is stated as continuing until 31 October 2013. There was provision in the lease that it would continue thereafter on a two monthly basis until ended by either party.

3. The Notice to Quit was dated 7 July 2021 and addressed to the Respondents. The Notice to Quit seeks vacant possession as at 31 January 2022.

DECISION

4. I have considered the application 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;

(b) the dispute to which the application relates has been resolved;

(c) they have good reason to believe that it would not be appropriate to accept the application;

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(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. After consideration of the application, I consider 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.

REASONS FOR DECISION

6. "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. 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"*. It is that definition which I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived and has no prospect of success.

7. Section 33 of the 1988 Act as amended provides as follows:-

33 - Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First –Tier Tribunal may make an order for possession of the house if satisfied that—

(a) that the short assured tenancy has reached its ish;

(b) that tacit relocation is not operating;

(c) ... and

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house

(e) that it is reasonable to make an order for possession.

8. The issue before me is whether recovery of possession of the property under Section 33 of the 1988 Act is competent. To recover possession of a short assured tenancy under Section 33 of the 1988 Act, the tribunal must be satisfied that the requirements of this section are met.

9. In this application the tenancy was for an initial period of 6 months from 30 April 2013 until 30 October 2011. It states that it will continue on a two monthly basis thereafter. The "ish date" must therefore fall every 2 months. The "ish date" is not therefore 31 January 2022. The Notice to Quit served in this case stated that the Tenancy Agreement would terminate on 31 January 2022, this is not the ish date. The Notice to Quit does not therefore end the tenancy on the ish date; and tacit relocation is still operating.

10. Accordingly, in relation to the failure to end the tenancy on the ish date the requirements of Section 33 have not been met and an order for recovery of possession could not therefore be competently made by the First-Tier Tribunal.
11. For the reasons set out above, it seems to me that the application is frivolous as the statutory requirements are not met.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:-

An applicant aggrieved by the decision of the Chamber President, or any Member acting under delegated powers, 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 of the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

M Barbour

Legal Member/Chair

Date