

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/2386

Re: 3 The Avenue, Kilmacolm, PA13 4PW ("the Property")

Parties:

Bank of Scotland PLC ("the Applicant")

Aberdein Considine ("Applicant's Representatives")

Ms Elaine McDonald ("the Respondent")

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 65 on 31 July 2019. The grounds for possession/eviction were stated to be Ground 2 of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**). The following documents were enclosed with the application:

- (i) Assured Tenancy (**AT**) commencing 3 November 2017 until 2 November 2020;

- (ii) AT6 dated 13 November 2018 which relies upon Ground 2 and specified 20 January 2019 as the earliest date proceedings could be raised;
- (iii) Extract Decree from Greenock Sheriff Court dated 3 August 2017;
- (iv) Section 11 Notice to Glasgow City Council.

2. The application was considered by the Tribunal and further information was requested by email of 13 August 2019. The Applicant's Representatives were asked:

- (a) The AT6 stated that proceedings could not be raised before 20 January 2019. The application was received on 31 July 2019 more than 6 Months after the 20 January 2019. The Applicant's Representatives were to address the Tribunal on why the application should not be rejected;
- (b) To provide the documentation required in support of Ground 2(b) or address the Tribunal on why it was not required; and
- (c) To provide a section 11 Notice addressed to the correct local authority.

The Applicant's Representatives were given until 27 August 2019 to respond failing which the application may be rejected.

3. No response was received.

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 65. In order to do so the tenancy must have been validly terminated and tacit relocation not be operating. No Notice to Quit has been produced and the AT has not been terminated. Further, the AT does not include the Grounds contained within Schedule 5 to the 1988 Act so the Tribunal would not be able to grant the order sought purely on service of

an AT6. In any event the AT6 sought to be relied upon by the Applicant is defective and invalid. Proceedings have been initiated more than 6 months after the date specified in the AT6.

7. The Applicant has not served a section 11 Notice on the correct Local Authority. The Tribunal cannot grant an order where no notice under section 11 has been served.
8. 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 Applicant has failed to provide necessary information requested within a reasonable time. 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.

A Strain

Legal Member/Chair

9 September 2019

Date