

Housing and Property Chamber First-tier Tribunal for Scotland



DECISION AND STATEMENT OF REASONS OF THE FIRST-TIER TRIBUNAL

in the case

APPLICANT: LOUISE COXON
RESPONDENT : MR DEAN SIBLEY AND MS JANETTE CREE
PROPERTY ADDRESS: 72 MAXWOOD ROAD, GALSTON, KA4 8QE
CASE REFERENCE: FTS/HPC/EV/18/0004

BACKGROUND

1. On 21st December 2017 an application was received from the Applicant, via her Solicitors. The application was made under Rule 65 of the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("The 2017 Regulations") being an application by a private landlord to obtain possession of rented property let under a short assured tenancy.
2. The following documents were provided in support of the application:-
 - a) copy of the Lease upon which the application proceeded,
 - b) copy AT5 form dated 3rd March 2017,
 - c) copy Section 33 notice dated 3 July 2017,
 - d) copy Notice to Quit issued to First Defender dated 28th September 2017,
 - e) copy Notice to Quit issued to the Second Defender dated 28th September 2017,
 - f) copy AT6 issued to First Defender dated 28th September 2017,
 - g) copy AT6 issued to Second Defender dated 28th September 2017,
 - h) certificate of service of Notices to Quit and AT6's,
 - i) copy Section 11 Notice to Local Authority.
3. The First Tier Tribunal had obtained a copy of the Land Certificate relating to the property. This showed the owner as Louise Sara Dick, 72 Maxwood Road, Galston.

4. In terms of the application the Landlord is Mrs Louise Coxon, 8 Rumford Place, Kilmarnock, KA3 6FH. In terms of the Lease, the Landlord is stated to be Louise Coxon, c/o Martin and Co, 24 Parkhouse Street, Ayr, KA7 2HH.
5. The Lease provided in support of the application is not signed by Louise Coxon. On Page 22 of 23 pages of the Lease, it indicates that it is "signed by the Landlords" with the name of the person signing being provided as Kasim Hussain.
6. The Lease does not indicate that Mr Hussain has been appointed in any capacity to act as agent on behalf of Louise Coxon. No other documentation has been provided to indicate that Kasim Hussain was appointed to act as agent for Louise Coxon.
7. No information nor documentation was provided to show any link or connection between the person named Louise Sara Dick detailed in the Land Certificate and Louise Coxon, detailed in the application and supporting documents.

DECISION

8. The legal member considered the application in terms of Rule 8 of the Schedule to the 2017 Regulations. 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.

9. After consideration of the application and other documents submitted in support of it, the Legal Member considers that the application should be rejected on the basis that it would not be appropriate to accept the application in accordance with Rule 8 (1)(c) .

REASONS FOR DECISION

10. The application proceeds on the basis of a purported lease entered into between Louise Coxon and the Respondents. The documents provided do not provide evidence of a lease being entered into between those parties. The copy lease provided is not signed by Louise Coxon. It is signed by a Kasim Hussain. No documents have been provided indicating that the person purporting to sign the Lease on behalf of Louise Coxon was authorised to do so. Accordingly, it does not appear that there is any valid written lease to enable the Tribunal to proceed with the application.
11. The application proceeds in the name of Louise Coxon. The Land Certificate for the property details the heritable proprietor of the property to be a person by the name of Louise Sara Dick. No information has been provided to evidence that the heritable proprietor and the landlord are the same person. An issue arises, therefore, as to the Applicant's right to raise proceedings.
12. Two separate Notices to Quit, each dated 28th September 2017, issued to each of the Respondents, do not appear to assist the application. While it is doubtful whether a Notice to Quit is required given that the lease, if it was able to be accepted in support of the application, specifically states that tacit relocation shall not apply to the tenancy, the Notices to Quit do not advise of a required date for the Respondents to vacate the premises. Rather, they state that the Respondents are to quit the property "not earlier than 2 December 2017" rather than on, or before, a specified date.
13. The AT6 provided does not appear to be valid. The AT6 states the ground for termination of tenancy to be in terms of s33 of the Housing (Scotland) Act 1988 ("the 1988 Act") An AT6 notice, however, requires to make reference to one of the grounds specified in Schedule 5 to the 1988 Act. If the intention was to proceed on the basis of a notice having been served in terms of s33, no AT6 is required.
14. The application purports to proceed in terms of Rule 65. It would appear from the application and documents submitted, had the application been able to be accepted, that the application should be made under Rule 66.
15. In the circumstances, for the reasons stated the Legal Member considers that it would not be appropriate to accept the application. The application is, accordingly, rejected.

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 Legal 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 the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

Mr Virgil Crawford
Legal Member
18th January 2018