



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/23/2385

Re: 33 Mariners View, Ardrossan, KA22 8BF ("the Property")

Parties

**Ms Anne Sobek, Luke Sobek (Applicant)
Mrs Patricia Aiken (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 rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.

Background

1. The application was received by the Tribunal under Rule 65 on 18 July 2023.
2. The tenancy agreement (**tenancy**) commenced on 24 April 2009 to 23 October 2009 and monthly thereafter.
3. The Applicant purported to terminate the tenancy by serving a Notice to Quit dated 13 June 2023 which specified the date to quit as 12 September 2023. This was not an "ish" date under the tenancy. The tenancy was not validly terminated and continued.
4. The Applicant produced an unsigned and undated Form AT6 which did not specify the numbered Grounds under Schedule 5 to the Housing (Scotland) Act 1988.
5. The Applicant did not produce a section 11 Homelessness Notice or proof of service of such Notice on the local authority.

6. The Applicant was requested to provide information by the Tribunal on 24 August 2023 as follows:

“Before a decision can be made, we need you to provide us with the following:

1. The Notice to Quit would appear to be invalid as it has not been served to an ish date of the tenancy. Please consider withdrawing the application and serving a further Notice to Quit to the ish date of the tenancy, which would appear to be 23rd October. You may wish to take advice on this matter from a solicitor or suitable housing agency as this can be a complicated matter.

You should be aware of the following for future applications:

2. You must ensure that the Notice to Quit and related documents are served on the Respondent by a method provided for in the relevant legislation, and you must provide evidence of service, such as a Sheriff Officer report or evidence of posting and tracking receipt through recorded delivery.

3. The Form AT6 appears to cite incorrect grounds of eviction. Ground 1A in terms of the Housing (Scotland) Act 1988, which is the relevant legislation for this type of tenancy, is not based on selling the property. Any form AT6 must be served citing grounds of eviction as set out in the 1988 Act. You may wish to take advice on whether to proceed in terms of Rule 66, rather than Rule 65.

4. We would expect to see a full copy of the tenancy agreement.

5. If an application is accepted, all bank statements will be shared with the Respondent, therefore, you may wish to redact any personal information that you do not wish the Respondent to have.

6. You must serve a section 11 notice on the local authority and provide us with a copy of the same, together with evidence of service, such as the email or letter sent to the local authority.”

The Applicant has failed to produce a valid Notice to Quit, Form AT6 or a section 11 Notice.

Reasons for Decision

7. 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."

8. '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*".

9. The application seeks to proceed under Rule 65. In order to do so the Applicant must have validly terminated the tenancy. The Notice to Quit did not specify a valid "ish" date. The tenancy was not validly terminated and continued.

10. The Applicant failed to provide a valid AT6 and a section 11 Homelessness Notice along with proof of service on the local authority.

11. In light of the above the Tribunal concluded that that the application had no prospect of success. The Tribunal could not grant the order sought when the contractual tenancy had not been validly terminated by a valid notice to quit. Furthermore, the Applicant could not rely upon the AT6 given that the Grounds under Schedule 5 to the Housing (Scotland) Act 1988 had not been referred to and the Form was unsigned and undated. The Applicant had also failed to provide a copy of the required section 11 Notice and proof of service. 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. 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.



2 November 2023

Legal Member/Chair

Date