



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/24/1053

Re: Craigview, Over Abington, Abington, South Lanarkshire, ML12 6SF ("the Property")

Parties

Mr Craig Jenkins (Applicant)

Mr Peter McLemon, Mrs Pauline McLemon (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.

Background

1. The application was received by the Tribunal under Rule 65 on 4 March 2024. The grounds for possession/eviction were stated to be that the landlord intended to sell the Property once he had vacant possession. The following relevant documents were enclosed with the application:
 - (i) Short Assured Tenancy (**SAT**) from the commencement date of 11 November 2009 to 11 May 2010 in respect of the Property;
 - (ii) AT5 dated 11 November 2009;
 - (iii) Notice to Leave dated 1 September 2023 which specifies that recovery of possession is being sought under Grounds 1 and 1A of the **Private Housing (Tenancies) (Scotland) Act 2016** along with track and trace receipt from Royal Mail;

- (iv) Section 11 Notice to local authority and proof of service on local authority by email of 5 March 2024.

2. The application was considered by the Tribunal and further information was requested by email of 28 March 2024. The Applicant was asked:

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

- It is noted that the eviction application is in respect of an Assured/Short Assured Tenancy under the Housing (Scotland) Act but that the ground for eviction being relied upon is that the landlord intends to sell the property. However, please note that this is not one of the grounds for eviction under the 1988 Act. It is a ground under the Private (Housing)(Tenancies)(Scotland) Act 2016 but this only relates to Private Residential Tenancies created after 1 December 2017.
- It is also noted that the formal notice you have served on your tenants is a Notice to Leave. Again, a Notice to Leave is only relevant to a Private Residential Tenancy and the process for eviction applications under the 2016 Act. This Notice is not a valid notice in relation to an Assured/Short Assured Tenancy which require a Notice to Quit and AT6 (or Section 33 Notice) to be served.
- You may accordingly wish to withdraw your application meantime, serve fresh Notices and submit a fresh application in due course, under a correct eviction ground, as, otherwise, your application will require to be formally rejected. It is recommended that you seek legal advice in respect of this matter, and, in particular, if you intend to serve fresh notices to ensure that they are valid as this is a fairly complex and technical area of law.”

The Applicant responded by email of 17 April in the following terms:

“My Notice to quit covered both grounds 1 and 1A in the Guidance Notes above:

Ground 1: The Landlord intends to sell the Let Property

Ground 1A: The Landlord intends to sell the Let Property to alleviate financial hardship

You should either proceed under option 1 in the Letter to Applicant or Option 3 if for some reason they do not think Ground 1A was checked on the Notice – you may wish to contact the Tribunal for clarification to advise that both Grounds were checked in the Notice that was served on the tenant so Ground1 and Ground1A are both covered”

Reasons for Decision

3. 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."

4. '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"*.
5. The application seeks to proceed under Rule 65 in respect of recovery of possession under an assured tenancy created under the Housing (Scotland) Act 1988 (**Act**). In order to do so the tenancy must have been validly terminated and tacit relocation not be operating. An assured tenancy may be terminated by service of a Notice to Quit in the prescribed form. The Applicant has not served a Notice to Quit. Instead he has served a Notice to Leave which has no application to assured tenancies. The tenancy continues by tacit relocation until it has been validly terminated.
6. Furthermore, The Tribunal cannot grant an order for recovery of possession on the Grounds stated. It is not a Ground under Schedule 5 to the Housing (Scotland) Act 1988 that a landlord intends to sell the Property.
7. 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. 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