



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/24/1192

Re: 29 Bluebell Glade, Adambrae, Livingstone, EH54 9JJ ("the Property")

Parties

Mrs Aneela Amjid (Applicant)

Mr Mustapha Mirza, Mrs Robila Mirza (Respondent)

Mr Amjid Rajput (Applicant's Representative)

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 originally under Rule 65 on 12 March 2024. The Ground for possession/eviction was stated to be Ground 1. The following relevant documents were submitted with the application:

- (i) Short Assured Tenancy (**SAT**) commencing 1 July 2017 until 1 July 2018;
- (ii) Notice to Leave dated 27 December 2023;
- (iii) AT6 dated 27 December 2023 specifying the Ground for possession as being Ground 1 (that the Landlord wishes to sell the Property), and that the earliest date for raising proceedings was 20 March 2024;

- (iv) Section 11 Notice with proof of service on West Lothian Council on 18 March 2024;
- (v) Section 33 Notice dated 27 December 2023;
- (vi) Receipt from Respondents confirming receipt of Notice to Leave, AT6, Section 33 and Section 11 Notices by hand on 27 December 2023.

2. The application was considered by the Tribunal and further information was requested by email of 11 April 2024. In particular the Applicant's Representative was requested to provide the following further information:

"Please provide evidence that the notice given to the local authority as required in terms of section 11 of the Homelessness (Scotland) Act 2003 has been delivered to the local authority.

Your application has been lodged in terms of rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the tribunal's procedure rules) which relates to eviction applications arising from assured tenancies under and in terms of the Housing (Scotland) Act 1988 ("the 1988 Act). You have attached to your application a copy of a tenancy agreement which bears to be an assured tenancy.

You have not provided a copy of a valid notice to quit nor a properly completed form AT6 which are both required if you wish to pursue an application for eviction from an assured tenancy under rule 65.

The form of notice which you have provided appears to be a combination of the notice to leave required in respect of a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") and part of the form AT6 required in terms of the 1988 Act. This form seems to be hybrid of your own creation.

You have provided no evidence of the method of delivery of this form on your tenant nor any evidence of its receipt.

You indicate in your application that you seek obtain an eviction order based on ground 1 that you intend to sell the property. If your property is an assured tenancy under the 1988 act then the relevant grounds for eviction are contained in schedule 5 of the 1988 Act and none of those grounds relate to a landlord wishing to sell the property or having an intention to sell the property.

Can you please either provide the tribunal now with a valid notice to quit and form AT6 setting out a valid ground in terms of the 1988 Act together with proof of service of those notices upon the tenant.

Alternatively, please indicate that you accept that this application as it currently stands is completely ill founded and will fall to be rejected. If that is the case please confirm that you now wish to withdraw the application and start afresh.

"

3. The Applicant's Representative replied by email of 14 April 2024 in the following terms:

"Your Ref: FTS/HPC/EV/24/1192

Dated: 13th April, 2024

I refer to your email as below. Unfortunately I am not happy with this inaccurate and ill informed response and for the record will provide you with the facts for determination by the First Tier Tribunal.

1. Form E (Private Landlord Eviction) application was submitted to the Housing and Property Chamber (by post) on the 11.03.24. This included hard copies of the valid Notice to Leave, AT6, Section 33 form, Tenancy Agreement, Form bb does not apply.

2. I received an email from your colleague (Margo Fyfe) on the 13.03.24 acknowledging the application. The only notice outstanding at the time was the section 11 to the West Lothian Council. Delivered by email. Attached evidence.

3. On the 18.03.24 you were sent the section 11 notice by email and a copy is attached to this email. You did infact receive the required information, AT6, notice to quit, as you refer in your email of the 11th April, 2024.

4. For any ambiguity - on your behalf the notice(s) were served to the tenants by hand. Attached is a record from the tenant receiving the relevant information in a timely manner. A Section 33 notice was also issued. Attached.

5. In terms of your email mentioning that "...form seems to be a hybrid of your own creation", I very much disagree with this disrespectful comment. The AT6 form is issued by The Scottish Government and available online. Link as follows <https://www.gov.scot/publications/form-at6/>.

6. I don't see why you are already denying this application, despite already providing you with all the relevant information (in good faith). Attached evidences as requested.

7. The Grounds for eviction are valid. I refer you to the Housing (Scotland) Act 1988. Also attach form H.247a that refers. Again, an online SG document.

8. Please confirm that you now have all the information.

9. I believe (my client) has followed all your rules, acts, statutes relating to the eviction. Which part of the legal process does your legal adviser not understand?

10. I wish to lodge a complaint and intend to refer the matter to the SPSO for the failure to process this application with all relevant legal forms and evidence(s) submitted to the tribunal. This is prejudicial to my client's rights. If

you or your legal adviser are still are unsure or require any further 'additional items of information', do not hesitate to contact me.

I trust this clarifies. “

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 of the **First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017** which provides as follows:

"Application for order for possession in relation to assured tenancies

65. Where a landlord makes an application under section 18(1) (orders for possession) of the 1988 Act, the application must—

(a)state—

(i)the name, address and registration number (if any) of the landlord;

(ii)the name, address and profession of any representative of the landlord;

(iii)the name and address of the tenant; and

(iv)the possession grounds which apply as set out in Schedule 5 of the 1988 Act;

(b)be accompanied by—

(i)a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;

- (ii) a copy of the notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy;
 - (iii) a copy of the notice to quit served by the landlord on the tenant (if applicable);
and
 - (iv) evidence as the applicant has that the possession ground or grounds has been met; and
- (c) be signed and dated by the landlord or a representative of the landlord.”

The Tribunal then proceeded to consider whether the required information/documentation had been provided.

Ground for Possession under Schedule 5 to the Act

7. The Applicant seeks to proceed under Rule 65 to recover possession using what is described in the application form, Notice to Leave and Form AT6 as Ground 1. The Notice to Leave further specifies that the Ground for eviction is that the Landlord intends to sell the Property. The Applicant’s Representative maintained that this was a valid Ground in terms of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**).

Ground 1 of Schedule 5 to the Act provides:

Ground 1

Not later than the beginning of the tenancy the landlord (or, where there are joint landlords, any of them) gave notice in writing to the tenant that possession might be recovered on this Ground or the First-tier Tribunal is of the opinion that it is reasonable to dispense with the requirement of notice and (in either case)—

(a) at any time before the beginning of the tenancy, the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them occupied the house as his only or principal home; or

(b) the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them requires the house as his or his spouse’s or civil partner’s only or principal home, and neither the landlord (or, in the case of joint landlords, any one of them) nor any other person who, as landlord, derived title from the landlord who gave the notice mentioned above acquired the landlord’s interest in the tenancy for value.

Evidently, Ground 1 is not on the basis that the Landlord intends to sell the Property. An intention by a landlord to sell a Property let on an assured tenancy is not a ground for recovery of possession under Schedule 5 to the Act.

Notice to Quit

8. A document purporting to be a Notice to Leave had been served. This document did not (on consideration of its content and failure to specify an ish date) validly serve to end the contractual SAT and the SAT continues. Further, the Notice to Leave did

not contain the information prescribed by **The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988**.

The Tribunal considered that the SAT had not been validly terminated as no valid Notice to Quit had been served on the Respondent.

Notice by landlord of intention to raise proceedings for possession of a house let on an assured tenancy (AT6)

9. The Tribunal considered that no valid AT6 had been served on the Respondent. The document submitted in support of the application which purported to be a Form AT6 was not in the prescribed format and stated that the Applicant intended to raise proceedings to recover possession on the basis of Ground 1 which was that the landlord wished to sell the Property. As stated above, an intention to sell a Property by a landlord is not a Ground for recovery of possession under Schedule 5 to the Act.

10. The Applicant has accordingly failed to provide valid copies of documents required under Rule 65. The Applicant has not provided a valid Notice to Quit and AT6. The Applicant has not stated valid Grounds under Schedule 5 to the Act.

11. The Tribunal considered that, 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

8 May 2024

Legal Member/Chair

Date