



Decision with Statement of Reasons of H Forbes, 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/24/1201

Parties:

Lois Holding; Bob Mathieson ("the Applicant")

Claire Welch ("the Respondent")

Tribunal Member:

H Forbes (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. An application under Rule 109 was received on 12th March 2024 with associated documents. An order for possession was sought under Ground 12.
2. A Legal Member of the Tribunal considered the application and an email was sent to the Applicant requesting further information on 11th April 2024 as follows:

1. The notice to leave which you have lodged does not comply with the requirements for a notice to leave in terms of the Private Housing (Tenancies) (Scotland) Act 2016. If you have not served a proper notice to leave, please confirm that you are withdrawing the application, as it cannot be accepted in its current form. You may wish to take advice before serving a proper notice to leave to ensure it is completed and served correctly.

You should also be aware of the following:

2. When making an application, you must provide evidence of service of a notice to leave upon a respondent. If service is carried out by personal delivery to the respondent, you must provide details of the date and circumstances of service.

3. The application form is co-signed by the joint owner of the property but you have not included them as a joint applicant or provided their contact details.

4. You have not provided a section 11 form with evidence of service upon the local authority, as required by the 2016 Act.

5. The rent statement should show rent due, rent paid and a running total of rent arrears.

6. Evidence of compliance with the pre-action protocol should be lodged, if available.

Please reply to this office with the necessary information by 25 April 2024. If we do not hear from you within this time, the President may decide to reject the application.

3. By email dated 16th April 2024, the Applicant replied as follows:

This is Robert Mathieson responding to the below email.

On point 1, can you please further explain the problem with how we served this eviction notice? You have confirmation from Miss Welch's housing officer, confirming this was served personally? We are not in a position to waste even more money on legal advice going forward on an eviction notice that Miss Welch and also Miss Charmaine Simpson has accepted, who is the housing officer at Highland Council, and her email from Highland Council is attached.

Point 2, our notice to leave is dated the 5th of January, which was the date served by Lois Holling as the landlord, and accepted by Miss Welch. This is all on the letter attached, and worded according to the guidance we found on line?

Point 3, I am the co applicant [contact details provided].

Point 4, After discussions on the phone with the Highland Council they told us we did not need to fill in a section 11 form as they were aware of the situation? If the whole point of this is to raise awareness to the local housing authority, surely the attached email provides clarity that the Highland Council was fully aware? It is the Highland Council that has guided us on how to go about this? We can do a section 11 but we would need this classed as retrospective, we cannot wait months for this to go through, we literally cannot afford to keep paying the mortgage for this property.

Point 5, we have provided this already, it was attached, do you require this now to be updated, and is this so we can look to raise a claim somehow?

Point 6, We have supplied all we have had, and followed every point we have been given by Highland Council. I understand there are legal protocols, however i do feel all the information has been provided, and what we look to have received back from First Tier Tribunal Scotland is at best pedantic. We are loosing money hand over fist, while this young lady is clearly playing the system.

Can you please have someone senior look at our information, and if needed can we please schedule a call so this is processed imminently?

4. The application was considered by a Legal Member on 13th May 2024.

Reasons for Decision

5. 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.

6. Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) provides:

A tenancy which is a private residential tenancy comes to an end if—

(a) the tenant has received a notice to leave from the landlord

7. Section 52(3) of the 2016 Act provides:

An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

8. Section 62 of the 2016 Act provides:

62 Meaning of notice to leave and stated eviction ground

(1)References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

9. Regulation 6 of The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 provides as follows:

A notice to leave given by the landlord to the tenant under section 50(1)(a) (termination by notice to leave and tenant leaving) of the Act must be in the form set out in schedule 5.

10. The Applicant has failed to serve a valid Notice to Leave in the specified form as set out in schedule 5 of the 2017 Regulations upon the Respondent.

11. Section 56 of the 2016 Act provides:

Restriction on applying without notifying local authority

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant unless the landlord has given notice of the landlord's intention to do so to the local authority in whose area the let property is situated.

(2) Notice under subsection (1) is to be given in the manner and form prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003.

12. The Notice to Local Authorities (Scotland) Regulations 2008 sets out the form of notice in Schedule 1.

13. The Applicant has failed to serve a valid section 11 notice upon the local authority in the specified form set out in Schedule 1 and as required by the 2016 Act.

14. Rule 109 of the Procedural Rules provides that an application must be accompanied by a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act. No valid notice to leave in terms of the 2016 Act was lodged with the application.

15. Rule 109 of the Procedural Rules provides that an application must be accompanied by a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act. No valid section 11 notice was lodged with the application.
16. '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*".
17. Applying the test identified by Lord Justice Bingham in the case of *R v North West Suffolk (Mildenhall) Magistrates Court* the application is frivolous, misconceived and has no reasonable 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.

H Forbes

13th May 2024

Legal Member/Chair

Date