



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/24/1117

Re: Flat 0/1, 18 March Street, Glasgow, G41 2PX ("the Property")

Parties

Mr John Maxwell; Mrs Sheila Maxwell (Applicants)

Mr Stewart Christmas (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 originally under Rule 65 on 7 March 2024. The grounds for possession/eviction were stated to be Ground 10 of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**). The following relevant documents were enclosed with the application:

- (i) Short Assured Tenancy (**SAT**) commencing 23 July 2010 to 23 January 2011;
- (ii) Notice to Quit dated 15 November 2023 specifying that the tenancy would terminate on 23 January 2024;
- (iii) AT6 dated 15 November 2023 specifying the grounds for possession as being that the Property had been let on a short assured tenancy which had

been terminated at its expiry date and the tenant had been given 2 months notice of the intention to repossess the Property.

2. The application was considered by the Tribunal and further information was requested by email of 11 April 2024:

“Rule 65 - FTS/HPC/EV/24/1117

1. You state in the application form that the application is made under ground 10, yet you provide no evidence of the Respondent having given notice to leave.

2. Ground 10 is not stated in the Form AT6, and the ground stated is not a ground in terms of the Housing (Scotland) Act 1988, but merely a reiteration of the requirements for a Rule 66 application. Furthermore, the Form AT6 has not been completed as no date is given at Part 4. In these circumstances, it would appear that the Form AT6 is invalid. Please consider withdrawing this application. “

3. The Applicant replied by email of 24 April 2024 in the following terms:

“I am doing the best that I can, and taking your points in turn... • The Notice to Leave was issued by Sheriff Officers on 16th November 2023 and I attach a copy of their confirmation. • I am not sure what is required on the AT6. As far as I can see it is signed at Part 4 and I have looked at the Guidance Notes for help in making it clear the reason that we wish to repossess the property. • As far as I can see all sections have been signed. I am beginning to wonder if I sent over the draft paperwork rather than the completed one. “

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”.*

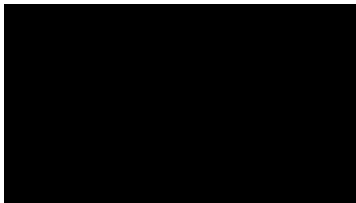
6. The application seeks to proceed under Rule 65 using Ground 10 of Schedule 5 to the Act. In order to rely upon these Grounds the Respondent must have given notice to quit to the Applicants and remained in possession of the Property. No such notice has been provided and the Applicants appear to be mistakenly relying on the termination of a short assured tenancy as constituting Ground 10 (which it does not).

Furthermore, the AT6 did not specify a valid Ground for recovery of possession under Schedule 5 to the Act and it did not specify a date at Part 4. The AT6 specifies termination of a short assured tenancy as the Ground for recovery of possession (which is not a valid Ground). The AT6 was accordingly invalid as it did not comply with the terms of section 19 of the Act. Accordingly, the Applicants have not complied with the requirements of the legislation and the application cannot succeed.

7. 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.



17 May 2024

Legal Member/Chair

Date