

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/PR/23/3959

Parties:

Ashley Leiper ("the Applicant")

Michelle Reeves ("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 would not be appropriate to accept the application as it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.

Background

1. An application made under Rule 110 was received on 8th November 2023 with associated documents. A wrongful termination order was sought.
2. A Legal Member of the Tribunal considered the application and an email was sent to the Applicant requesting further information on 27th November 2023 as follows:

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

- Please confirm whether the application is only in your name or in the name of the joint tenants. If the latter please provide authorisation from the joint tenant that you may act on their behalf and amend the application accordingly.
- Please provide evidence and an explanation how you consider the tenancy ended in accordance with S 50 of the Private Housing (Tenancies) (Scotland) Act 2016. The letters you refer to do not appear to be valid Notice to Leave documents and S 50 requires the tenant to have received a Notice to Leave and the tenant them subsequently leaving. A Notice to Leave is defined in S 62 of the 2016 Act. You may wish to take legal advice prior to providing your reply. If you cannot obtain advice from a solicitor there are free advice services available and

you and you can find links to some of these under the “useful links” button on the Housing and Property Chamber website.

Please reply to this office with the necessary information by 11 December 2023. If we do not hear from you within this time, the President may decide to reject the application.

3. By email dated 11th December 2023, the Applicant responded as follows:

I have attached the sole tenancy agreement I had received in October 2020 changed from the original tenancy agreement in 2018 with my sister as a joint applicant. She had moved out of the property due to losing her job during Covid.

In regards to the second request, I don't consider the tenancy ended in regards to S50. We received two invalid notice to leave without the correct documentation to support this in the space of 6 months therefore the landlord failed to follow the set process for evicting tenants. We did not want to leave the property at any point.

We felt pressured over this period by the landlord to leave. As a family we did not want to leave! We were settled with a child in local school and both our jobs very accessible from the property.

It was evident the landlord wanted us out of the property swiftly and as a family we felt we had no choice but to leave the property causing uncertainty and upheaval in the household and under immense pressure to find emergency accommodation.

Our solicitors have advised that the evidence we have supplied and further information in the email is sufficient for this part of the application process. We have also been advised the same evidence will be used in a case against landlord for failure to lodge our deposit, return said deposit and an unregistered landlord.

4. A Legal Member of the Tribunal considered the application and an email was sent to the Applicant representative on 18th January 2024 stating the following:

- Your application has been brought under rule 110. Rule 110 applies where a private residential tenancy has been brought to an end, either under section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, or following an eviction order. You have stated in your recent response that you do not consider the tenancy to have been brought to an end under section 50. Can you please explain on what basis you consider the application can proceed under rule 110. We note you have previously consulted a solicitor and would suggest you may wish to seek further advice prior to providing a response.

Please reply to this office with the necessary information by 1 February 2024. If we do not hear from you within this time, the President may decide to reject the application.

5. By email dated 31st January 2024, the Applicant responded as follows:

Thank you for your previous email, further to our previous evidence, my solicitor has reviewed the evidence and can confirm the landlord did not present to the tenant valid documentation for an eviction as set out in legislation rendering the eviction wrongful termination.

My solicitor has also advised the landlords issuing of false documentation and visit to the property was designed to put pressure on the tenant to leave the property, this was done knowing that the landlord could not apply to the tribunal for an eviction notice as the landlord would not be granted an eviction notice due to the fact; She did not follow the correct process for eviction. She was an unregistered landlord for majority of my tenancy. Failed to secure a deposit for the property. Failed to give any details regarding the deposit scheme. Rent was paid in cash for majority of the tenancy, undeclared earnings to HMRC.

Solicitor has advised the landlord knew she had to get us out of the property without applying to the tribunal this meant providing me with illegal documentation with misleading information. On receiving this documentation I felt pressured to provide a home which had a serious impact on my mental health and my family. Finding a suitable home in the local area was distressing and placed a huge financial burden meaning getting myself into significant debt.

6. A Legal Member of the Tribunal considered the application and an email was sent to the Applicant representative on 4th March 2024 stating the following:

You have lodged an application in which you seek a wrongful termination order, which is based upon certain provisions contained in of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).

Such an order can only be granted by a tribunal if a private residential tenancy has been brought to an end, either by an eviction order or after the service of a notice to leave and the tenant then leaving the tenancy.

Your tenancy has clearly not been ended by an eviction order.

Your application must therefore only be based on the terms of section 58 of the 2016 Act. That section requires you to demonstrate that your tenancy was brought to an end in a accordance with section 50 of the 2016 Act, i.e. the tenancy was terminated because the landlord served a notice to leave and the tenant then ceased to occupy the property You would also have to demonstrate that you were are misled into leaving the property.

You responses to the requests for further information clearly indicate that you have been obtaining independent advice and you indicate you have received that advice from a solicitor. It is also clear that after you received the letters from your landlord, indicating that she wished to terminate the tenancy that you also sought advice from the local council and from Shelter Scotland. It was clear you were given advice that you did not need to leave the property unless and until an eviction order was granted by the tribunal.

You were specifically asked in our last letter to you to explain the basis that you consider your application can proceed, taking into account the relevant provisions of the 2016 Act and the relevant provisions of the tribunal rules.

You were advised to seek for advice prior to provide a response. The response you have provided does not address the questions which have been raised.

Can you please again consider the matters raised in this letter and previous letters from the tribunal and explain the basis upon which you believe you can proceed with an application for a wrongful termination order.

In order to obtain such an order you need to demonstrate that you received a notice to leave in terms of the 2016 Act. The letters you have submitted from your landlord which indicate the tenancy is to be terminated do not appear to follow the required format for a Notice to Leave as set out in the 2016 Act and supporting regulations. Do you wish to try to argue that the letters constitute a formal notice to leave and that the provisions of section 58 of the 2016 Act have been met?

We would strongly suggest that you seek independent legal advice on this matter, and it may be preferable that you request the solicitor that you say you have consulted to reply to the tribunal in respect of this request.

Upon receipt of the above information, a final decision can then be taken on whether the eviction application is valid and whether it should be accepted and referred to the tribunal for full determination.

Please respond to this letter within the next two weeks.

If you fail to respond to this letter then the tribunal may reject your applications. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Please reply to this office with the necessary information by 18 March 2024. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

7. The application was considered by a Legal Member and a further opportunity to provide the requested information was afforded to the Applicant by email dated 30th April 2023. No response was received.
8. The application was considered by a Legal Member on 29th May 2024.

Reasons for Decision

9. 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 ...:

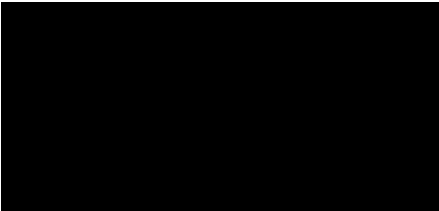
(c) they have good reason to believe that it would not be appropriate to accept the application;

(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."

10. Section 58 of the 2016 Act requires that the tenancy was brought to an end in accordance with section 50 of the 2016 Act, by the landlord serving a notice to leave and the tenant then ceasing to occupy the property. The Applicant has confirmed that the tenancy was not brought to an end in accordance with section 50 of the 2016 Act. An application under Rule 110 cannot be accepted in those circumstances.
11. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env LR9. He indicated at page 16 of the judgment; "What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic". On consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.

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.



29th May 2024

Legal Member/Chair

Date