



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/24/0357

Re: 66 Queen Street, Alva, FK12 5EJ ("the Property")

Parties:

Straith Estates Limited ("the Applicant")

Elizabeth Stevenson ("the Respondent")

Hill and Robb Limited ("the Applicant representative")

Tribunal Member:

Ms 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), and there is good reason to believe it would not be appropriate to accept the application within the meaning of Rule 8(1)(c), of the Procedural Rules.

Background

1. An application was received by the Tribunal under Rule 66 on 19th January 2024. The Applicant was seeking an order for possession and enclosed a copy short assured tenancy agreement with an initial period from 11th July 2006 to 10th January 2007, Form AT5 dated 12th July 2006, Section 33 notice and notice to quit with evidence of service, section 11 notice with evidence of service, and copy correspondence.
2. The application was considered by a Legal Member of the Tribunal and further information was requested by email dated 23rd February 2024 seeking representations as to

- (i) Whether the tenancy met the requirements for a short assured tenancy in terms of (a) its duration; and (b) the fact that the Form AT5 was served the day after the tenancy was created.
 - (ii) Whether the notice to quit, which required the Respondent to quit the property by 7th August 2023 was valid, given that (a) it had not been served to an ish date of the tenancy; and (b) less than 28 days' notice was given by the notice to quit.
3. The Applicant was also asked for evidence of service of the notices upon the Respondent. The Applicant was asked to respond by 8th March 2024.
4. By email dated 7th March 2024, the Applicant representative requested an extension to the period allowed to provide the information.
5. By email dated 11th March 2024, the Applicant representative was notified of an extension to the period allowed to provide the information to 29th March 2024.
6. A further request for the information was made to the Applicant representative by email dated 2nd May 2024. No response was received from the Applicant representative.
7. The application was considered further by a Legal Member of the Tribunal on 30th May 2024.

Reasons for Decision

8. 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.

9. On the information before the Tribunal, there is doubt over whether the tenancy agreement is a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988, given that the term is for less than six months, and the Form AT5 was not served before the creation of the tenancy. In the circumstances, there is good reason to believe it would not be appropriate to accept the application under Rule 66.
10. The Notice to Quit is invalid in respect that it specifies a date to leave the premises which is not an ish of the tenancy agreement, as required in order to constitute an effective notice. Furthermore, section 112(1) of the Rent (Scotland) Act 1984 provides that no notice to quit shall be valid unless it is given not less than four weeks before the date on which it is to take effect. Service of the Notice to Quit was effected on 24th July 2023, giving a period of less than four weeks' notice.
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. 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*". Applying this test, 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.

Helen Forbes

Legal Member/Chair

30th May 2024
Date