



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/24/3107

Parties

Mrs Shona Heggie (Applicant)
Mr Alexander Ramsay (Respondent)

1/18, Bellsmeadow Road, Falkirk, FK1 1SD (House)

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 under Rule on 5 July 2024. The grounds for possession/eviction were stated to be termination of a Short Assured Tenancy (**SAT**) under section 33 of the **Housing (Scotland) Act 1988 (Act)**. The SAT produced had an "ish" date of the 22nd of the month.
2. The Notice to Quit and Section 33 Notices produced in support of the application were both dated 14 February 2024 and purported to terminate the SAT on 24 June 2024.
3. The application was considered by the Tribunal and further information was requested by letter of 1 August 2024 as follows:

“ You have applied under Section 33 of the Housing (Scotland) Act 1988 and Rule 66 of the Tribunal Rules. The Act requires you to follow a strict statutory process to terminate a tenancy on a contractual end. Rule 66 requires you to submit proof that you have followed the process as part of the application. 1. The Notice to Quit which you have issued does not conform to the statutory style. The style can be found in The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988. 2. According to the tenancy agreement which you have submitted, the term of the let ends on the 22th of the month and the notice period is two months. The notice period conforms to the 1988 Act. You have given Notice to Quit and a Section 33 Notice both dated 14 February 2024 to terminate on 24 June 2024. These Notices should bring the tenancy to an end on contractual end or ish date and not on an arbitrary date. 3. The Notice to Quit and Section 33 Notice are signed by you and Graham Heggie. Graham Heggie is not named as a landlord on the tenancy agreement. He appears to be a witness to that deed. Please explain the effect of his signature on the Notices. Please explain why you consider the Section 33 Notice and the Notice to Quit to be competent.”

4. The Applicant responded by email of 9 August 2024 in the following terms:

“With regard to the paperwork for EV243107 I appreciate that there are errors which need to be corrected. It would seem appropriate therefore that these papers are also disregarded and I will then send competent paperwork to the Tribunal in order to proceed with the eviction of the tenant and complete the sale of my property. With regard to the signatures on the paperwork Graham Heggie is my husband and joint owner of the property and registered with the Local Landlord Register. That was the reason I asked him to include his signature (reference your request for his authority to sell).”

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. '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".

7. The application seeks to proceed under Rule 66 and Section 33 of the Act. In order to do so the tenancy must have been a short assured tenancy validly terminated at its ish. The Notice to Quit is not valid and has not terminated the SAT at its ish. The tenancy accordingly continues. The Tribunal cannot grant the order sought. The Applicant refers to submitting competent papers. The Applicant will require to serve valid notices and submit a new application once that has been done.

8. In light of the above reasons the Tribunal cannot grant the order sought. 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. Furthermore, the Tribunal consider that there is good reason why the application should not be accepted. 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

29 August 2024

Legal Member/Chair

Date