



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/24/2558

Re: U/L 6 Barbadoes Road, Kilmarnock, KA1 1SY 0NQ ("the Property")

Parties:

Jim Davie; Sam Abercrombie ("the Applicant")

Bobby Brown ("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 rejected on the basis that the Tribunal considers the application to be frivolous in terms of Rule 8(1)(a) of the Procedural Rules, and the Tribunal has good reason to believe it would not be appropriate to accept the application in terms of Rule 8(1)(c) of the Procedural Rules.

Background

1. The application was received by the Tribunal under Rule 65 on 5th June 2024. The Applicant lodged a copy Notice to Leave, citing ground 1, with evidence of service, Form AT6, citing ground 10, with evidence of service, and section 11 notice. The Applicant lodged a short assured tenancy agreement commencing on 8th June 2017.
2. The application was considered by a legal member of the Tribunal and by email dated 24th June 2024, the Applicant was asked to provide the following:
 1. You have not provided a copy of a notice to quit served to an ish date of the tenancy. This is required for a Rule 65 application. You have served a notice to leave, which is not applicable for an assured tenancy. If you have

served a valid notice to quit, please provide a copy together with evidence of service upon the Respondent. If you have not served a notice to quit to an ish date of the tenancy, please consider withdrawing the application. You may wish to take advice before serving any further notices as this is a complicated matter, particularly given the terms of the tenancy agreement.

You should also be aware of the following:

2. The Form AT6 refers to ground 10, but that is only applicable where the tenant has served notice upon the landlord, and not the other way round. You also refer in the notice to leave to ground 1, but selling a property is not a valid ground of possession in respect of an assured tenancy.

3. Title to the property is in the names JAMES DAVIE and MAGDALENE TERESA DAVIE and SAMUEL ABERCROMBIE and CAROLANN ABERCROMBIE. We would require to know whether all owners are to be joint Applicants, and be provided with their contact details, failing which, you would have to provide written authorisation from all owners to the application being made in the names of only some of the owners. We cannot accept care of addresses for Applicants.

4. You have not provided evidence of service of the section 11 notice on the local authority.

5. You would be expected to lodge evidence of service of all notices upon the Respondent.

Please reply to this office with the necessary information by 8 July 2024. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

3. A further opportunity to provide the requested information was afforded to the Applicant by email dated 8th August 2024, requesting a response by 15th August 2024, failing which, the application may be rejected.

No response was received.

4. The application was considered by a legal member on 4th September 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. The Tribunal has requested further information from the Applicant in order to determine whether the correct notice has been served upon the Respondent. The Applicant has failed to respond to the Tribunal's request for further information and documents. It would appear that the Applicant has served a Notice to Leave dated 7th November 2023 upon the Respondent, which is only applicable to a private residential tenancy, and not to an assured tenancy. The Applicant has then served a Form AT6, dated 20th May 2024, citing ground 10, but referring to the expiry of the Notice to Leave. Ground 10 is only applicable where the tenant has served notice to quit and remained in possession of the property. The Applicant has also failed to provide a valid notice to quit. A copy of this notice is required by Rule 65 of the Procedural Rules.
7. The Applicant has failed to comply with the requirements of sections 18 and 19 of the Housing (Scotland) Act 1988, and Rule 65 of the Procedural Rules.
8. '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".
9. On consideration of the above test, the Tribunal considers that this application is frivolous, misconceived and has no prospect of success.
10. The Tribunal determined that the application should also be rejected in terms of Rule 8(c) on the basis that there is good reason to believe it would not be appropriate to accept the application.
11. 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

Legal Member/Chair

4th September 2024
Date