



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/24/3552

Parties

Mrs Patricia Hutchison (Applicant)

Ms Angela Loughton (Respondent)

Dundedin Property Management Ltd (Applicant's Representative)

44/6 Pennywell Gardens, Muirhouse, Edinburgh, EH4 4PD (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 109 on 2 August 2024. The Grounds for recovery of possession were stated to be Ground 12A under the **Private Housing (Tenancies) (Scotland) Act 2016 (Act)**.

Further Information Request

2. The application was considered by the Tribunal and further information was requested from the Applicant's Representative by email of 2 September 2023. In particular, the Applicant's Representative was asked to confirm the Grounds relied upon in the application and also to note that Ground 12A was repealed on 31 March 2024 and could only be relied upon if a Notice to Leave specifying Ground 12A had been served prior to the date of repeal.

The Applicant's Representative responded by email of 13 September 2024 stating that the Ground relied upon was Ground 12A only and enclosed a Notice to Leave dated 30 April 2024. The Notice to Leave only specified Ground 12A. The Notice to Leave had been served by email of 30 April 2024.

Reasons for Decision

3. 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."

4. '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"*.

5. Rule 109 of the Tribunal Procedure Rules provides:

Application for an eviction order

109. Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the application must—

(a)state—

(i)the name, address and registration number (if any) of the landlord;

- (ii) the name, address and profession of any representative of the landlord;
 - (iii) the name and address of the tenant (if known); and
 - (iv) the ground or grounds for eviction;
- (b) be accompanied by—
- (i) evidence showing that the eviction ground or grounds has been met;
 - (ii) a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act; and
 - (iii) a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and
 - (iv) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and
- (c) be signed and dated by the landlord or a representative of the landlord.

Ground 12A repealed

The Applicant cannot rely upon Ground 12A. Ground 12A was introduced on a temporary basis by the **Cost of Living (Tenant Protection) (Scotland) Act 2022**. Ground 12A ceased to be a Ground for recovery of possession when the **Cost of Living (Tenant Protection) (Scotland) Act 2022** expired on 31 March 2024.

The application cannot proceed under Ground 12A and as no other Ground is relied upon the application cannot succeed.

5. 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.

A. Strain

23 October 2024

Legal Member/Chair

Date