



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/24/2902

Re: 18 Flat 4 Ferrygait Crescent, Edinburgh, EH4 4GR ("the Property")

Parties:

Simon Bruce ("the Applicant")

Leanne Bruce ("the Applicant representative")

Carol Raiker ("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 application is 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 26th June 2024 with associated documents.
2. Following a request for further documentation, on or around 1st July 2024 the Applicant lodged a copy of a notice to leave and a form AT6 served upon the Respondent. The ground of possession in respect of the form AT6 was that the property had to be sold.
3. Following a request for further documentation including a valid form AT6, a notice to quit, evidence to support the grounds of possession, and a section

11 notice, on 25th July 2024 the Applicant representative stated that she had sent all the information and had no other information to give.

4. Further requests for documentation were made to the Applicant on 16th August and 23rd September 2024. No response was received.

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. On consideration of the above test, the Tribunal considers that this application is frivolous, misconceived and has no prospect of success. The Tribunal also determined that the application should 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.

Reasons for Decision

8. In terms of section 18 of the Housing (Scotland) Act 1988 ("the Act"), an order for possession can only be made on a ground set out in schedule 5 to the Act. The ground included in the form AT6 in this application is not a ground set out in schedule 5 to the Act.
9. In terms of section 18(6) of the Act, the Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy,

not being a statutory assured tenancy, unless certain grounds apply and the terms of the tenancy make provision for it to be brought to an end on the ground in question. No notice to quit was lodged with this application. In the absence of a notice to quit, the tenancy remains a contractual assured tenancy. The ground of possession is not a valid ground of possession, and the tenancy does not allow for the tenancy to be ended on the ground in question.

10. In terms of section 19A of the Act, notice must be given to the local authority in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003. No evidence that such a notice was given to the local authority was provided with this application. A copy of the section 11 notice must be lodged with the application in terms of Rule 65.
11. In terms of Rule 65, an application must be accompanied by evidence that the grounds of possession have been met. No such evidence was lodged with this application despite repeated requests.
12. The application is frivolous and there is good reason to believe it would not be appropriate to accept the application. The application is 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

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28th October 2024
Date