



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/24/3768

Re: 191 Whifflet Street, Coatbridge, Lanarkshie, ML5 4ED ("the Property")

Parties:

Maureen McBride ("the Applicant")

Annie Hoey/Gardiner ("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 109 on 16th August 2024 with associated documents, including a notice to leave dated and served on 18th July, and requiring the Respondent to leave by 13th August 2024, and a tenancy agreement commencing on 1st June 2020 and showing this was a joint tenancy. The Applicant was seeking an eviction order under ground 11.
2. Following a request for further information, the Applicant stated that she had given previous notice to the Respondent although the notice to leave had not been issued until 18th July 2024. The Applicant also stated that the joint tenant had not been served with a notice to leave as they had left the property during the tenancy.

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. 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

5. In terms of section 52(3) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the Act"), an application for an eviction order must be accompanied by a copy of the notice to leave. The notice to leave must be valid and conform to the requirements of section 62 of the Act, by specifying the date on which the landlord expects to become entitled to make an application for an eviction order to the First-tier Tribunal. In terms of ground 11, the notice period is 28 days. In this case, insufficient notice was given to the Respondent, and the notice to leave is not valid.
6. In order to bring a joint tenancy to an end, a notice to leave must be served on all joint tenants. This remains a joint tenancy, but notice to leave has not been served on both tenants.
7. Given that the notice to leave is invalid, and service upon the joint tenant did not take place, 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

3rd December 2024
Date