



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/24/4877

Re: 2-2 Ardanhoe Avenue, Glasgow, G42 0DF ("the Property")

Parties:

Uzma Shazadi ("the Applicant")

David Thomson; Donna Thomson ("the Respondent")

GPS Glasgow ("the Applicant representative")

Tribunal Member:

Ms H Forbes (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed on the basis that it is frivolous within the meaning of Rule 8(1)(a), and there is good reason to believe it would not be appropriate to accept the application within the meaning of Rule 8(1)(c), of the Procedural Rules.

Background

1. An application was received by the Tribunal under Rule 66 on 30th September 2024. The Applicant was seeking an order for possession and enclosed a copy short assured tenancy agreement with an initial period of six months from 9th August 2013 and monthly thereafter, Form AT5, Section 33 notice and notice to quit with evidence of service, and section 11 notice with evidence of service.
2. The application was considered by a Legal Member with delegated authority of the Chamber President. By email dated 23rd October 2024, the Applicant representative was asked for their explanation as to why the notice to quit did not state the date on which the Property was to be vacated. The Applicant representative was invited to lodge a valid notice to quit.

3. By email dated 13th November 2024, the Applicant representative stated that the notice to quit and section 33 notice were served together, and the date of vacating the Property was stated in the section 33 notice, being 10th September 2024.
4. The application was considered further by a Legal Member of the Tribunal on 2nd December 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. Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) provides that the Tribunal may make an order for possession of the house if satisfied that that the short assured tenancy has reached its finish and tacit relocation is not operating. In this case, the notice to quit is invalid in respect that it fails to specify a date to leave the premises, therefore, tacit relocation is operating. The contractual tenancy remains in force, and the Tribunal could not make an order for possession in those circumstances in terms of section 33 of the 1988 Act.
7. '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”*. Applying this test, the application is frivolous, misconceived and has no prospect of success. There is good reason to believe that it would not be appropriate to accept the application. 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.

Legal Member/Chair

2nd December 2024
Date