Housing and Property Chamber
First-tier Tribunal for Scotland

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/24/3604

Parties

Asrar Un-Nabi, Mr David Adamson (Applicant)
Ms Ashleigh Nicoll (Respondent)

Campbell Boath Solicitors (Applicant's Representative)
G/R 81, Dens Road, Dundee, DD3 7HW (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 65 on 5 August 2024.

2. The tenancy agreement (**tenancy**) commenced on 8 October 2015 to 1 May 2016 and monthly thereafter.

3. The Applicant purported to terminate the tenancy by serving a Notice to Quit dated 4 April 2024 which specified the date to quit as 8 June 2024. This was not an "ish" date under the tenancy. The tenancy was not validly terminated and continued.

4. The Applicant produced a Form AT6 dated 31 May 2024 which relied upon Grounds 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**).

5. The Applicant's Representative was requested to provide information by the Tribunal on 3 October 2024 as follows:

"•You have explained that the Form AT6 was returned marked undelivered due to a minor error in the tenant's address. On the basis that the Form AT6 does not appear to have been served on the tenant, can you explain the legal basis upon which the Tribunal can entertain the application under Rule 65.

The notice to quit must terminate the tenancy as at the ish date. The term of the tenancy is 8 October 2015 to 1 May 2016 and monthly thereafter. It appears therefore that the tenancy is continuing on a rolling basis on the 1st of the month. Can you please explain why you believe the 8 June 2024 is a valid ish date."

The Applicant's Representative responded by letter of 8 October 2024 accepting that (1) the AT6 had not been served but explained that a copy had been provided to her solicitors and (2) the incorrect ish date had been stated in the Notice to Quit and asking the Tribunal to allow the Notice to Quit to be amended.

The Tribunal has no power to amend an invalid Notice to Quit.

Reasons for Decision

6. 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."

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".*

8. The application seeks to proceed under Rule 65. In order to do so the Applicant must have validly terminated the tenancy. The Notice to Quit did not specify a valid "ish" date. The tenancy was not validly terminated and continued.

9. The Tribunal considered whether the application could still proceed in terms of Section 18(6) of the 1988 Act. This states *"The First tier 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 – (a) the ground for possession is ground 2 or ground 8 in Part 1 of Schedule 5 to the Act or any of the grounds in Part II of that schedule, other than ground 9, ground 10, ground 15 or ground 17; and (b)*

the terms of the tenancy make provision for it to be brought to an end on the ground in question". In ***Royal Bank of Scotland v Boyle 1999 HousLR*** it was held that, where an invalid Notice to Quit had been served and the Pursuer sought to rely on Section 18(6) of the Act, *"(1) that the essential ingredients of the grounds for recovery of possession in Schedule 5 to the 1988 Act must be referred to in the tenancy agreement, and while this could be done by an exact citation of the grounds, and maybe also by providing a summary containing the essential ingredients of the grounds, incorporation by reference would not necessarily be appropriate".* The Tribunal notes that the tenancy which has been produced does refer to the grounds for recovery of possession in Schedule 5 to the 1988 Act but has not stated the ground for possession relied upon in the application, as required by Section 18(6). The Grounds are referred to as being in a schedule to the tenancy which has not been produced. As a result the Applicant has failed to meet the requirements of section 18(6) and cannot proceed under this section. In order to raise proceedings for recovery of the property the Applicant must first bring the contractual tenancy to an end. The Notice to Quit which has been lodged is invalid and does not bring the contractual tenancy to an end. Furthermore, the Tribunal considered that no evidence of valid service of the AT6 on the Respondent had been provided. Accordingly, the Applicant has not complied with the requirements of the legislation and the application cannot succeed.

10. In light of the above the Tribunal concluded that that the application had no prospect of success. The Tribunal could not grant the order sought when the contractual tenancy had not been validly terminated by a valid notice to quit. Furthermore, the Applicant could not rely upon the AT6 given that the Grounds under Schedule 5 to the Housing (Scotland) Act 1988 had not been validly incorporated as Grounds upon which the tenancy could be terminated and no evidence of service on the Respondent had been provided. 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.

19 November 2024

Legal Member/Chair **Date**