



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/24/4411

Parties

**Mr David Jeffrey (Applicant)
Miss Alison Haig (Respondent)**

FBR Seed Limited (Applicant's Representative)

14/4 Loan, Hawick, Scottish Borders, TD9 0AT (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 66 on 20 September 2024. The grounds for possession/eviction were stated to be termination of a Short Assured Tenancy (**SAT**) under section 33 of the **Housing (Scotland) Act 1988 (Act)**. The Applicant could only produce part of the SAT and could not produce evidence of the term.

2. The application was considered by the Tribunal and further information was requested by email of 23 October 2024 as follows:

“Your application has been referred to a legal member with delegated powers of the Chamber President. The legal member asks you to provide information as follows: 1. Whilst we note that you do not have a complete copy of the lease, please provide sufficient evidence to establish that the tenancy was a short assured tenancy. Please provide the AT5 and also evidence of the initial term of the tenancy or explain on what basis the application can proceed under Rule 66 in the circumstances. 2. Please provide a copy of the section 11 Notice served on the local authority. Please reply to this office with the necessary information by 6 November 2024. If we do not hear from you within this time, the President may decide to reject the application.”

3. The Applicant responded by email of 4 November 2024 in the following terms:

“Thank you for your email. 1. Please find attached a copy of the AT5. We are unable to provide evidence that shows the tenancy is a short-assured tenancy. We took over management of this property from another agent back in July 2022. The agent did not hand over any documents in respect of this property and the information we do have was obtained from the tenant. 2. I attach a copy of the section 11 Notice served on the local authority, together with email confirmation from Scottish Borders Council confirming they received the notice.”

Reasons for Decision

4. 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."

5. '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”.*

6. The application seeks to proceed under Rule 66 and Section 33 of the Act. In order to do so the tenancy must have been a short assured tenancy validly terminated at its end. The Applicant is unable to provide a complete copy of the SAT to establish that it is in fact a short assured tenancy. The Tribunal cannot be satisfied that an SAT was created. The Tribunal cannot grant the order sought.

7. In light of the above reasons the Tribunal cannot grant the order sought. 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

28 November 2024

Legal Member/Chair

Date