



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/19/0078

Re: 5 McMahon Drive, Newmains, Wishaw, ML2 9BS ("the Property")

Parties:

Mr James Whiteford ("the Applicant")

Ms Keri Hendrickson ("the Respondent")

Ness Gallagher Solicitors Limited (Applicant's Representative)

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 and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).

Background

1. The application was received by the Tribunal under Rule 65 on 11 January 2019. The grounds for possession/eviction were Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988. The following documents were enclosed with the application:
 - (i) Tenancy Agreement in respect of the Property which stated it was from 17 October 2014 and month to month thereafter;
 - (ii) AT6 dated 7 June 2018 which specified 22 June 2018 as the earliest date for raising proceedings;
 - (iii) Section 11 Notice; and
 - (iv) Execution of Service of AT6 and Proof of Delivery of Section 11 Notice;

- (v) Notice to Quit dated 15 February 2019 which specifies the end date of the tenancy as 29 March 2019;
- (vi) AT6 dated 15 February 2019 which states that proceedings will, not be raised before 1 March 2019.

Reasons for Decision

2. 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."

3. '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"*.

4. The application purports to proceed on the basis of Rule 65 and termination of an assured tenancy. The "ish" date of the tenancy is the 17th of the month and the tenancy subsists by tacit relocation by renewing for periods of 1 month. The date for removing in the Notice to Quit does not coincide with the ish date of the tenancy. The tenancy has accordingly not been validly terminated. The date specified for removing in the Notice to Quit is in the future. The Tribunal could not grant the order sought. Furthermore, the Notice to Quit and latest Form AT6 have been served after the commencement of proceedings. The AT6 is accordingly defective. The Tribunal could not 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. Furthermore, the Tribunal consider that there is good reason why the application should not be accepted. 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

Legal Member/Chair

Date

1 MARCH 2009