



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/19/0449

Re: 263 Kingsbridge Drive, Glasgow, G73 2BP ("the Property")

Parties:

Mr Pervez Siddique ("the Applicant")

Ms Janis White ("the Respondent")

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 66 on 11 February 2019. The grounds for possession/eviction were termination of a Short Assured Tenancy. The following documents were enclosed with the application:
 - (i) Tenancy Agreement dated 1 April 2015 in respect of the Property which stated it was from 27 March 2015 until 30 September 2015 and thereafter on a three monthly agreement;
 - (ii) AT5 dated 1 April 2015;
 - (iii) AT6 dated 19 May 2018 which specified 20 July 2018 as the earliest date for raising proceedings;
 - (iv) Notice to Quit and Section 33 Notice dated 19 May 2018 both of which specify 20 July 2018 as the date for removing;
 - (v) Section 11 Notice; and
 - (vi) Proof of Delivery.

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 66 and termination of a Short Assured Tenancy. The "ish" date of the tenancy is the 30th of the month and the tenancy subsists by tacit relocation by renewing for periods of 3 months. The Notice to Quit and Section 33 Notice do not coincide with the ish date of the tenancy. The tenancy has accordingly not been validly terminated. 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

Alan Strain

Legal Member/Chair

1 March 2019
Date