



**Decision 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/21/0582

Re: Property at 70 Eastwood Avenue, Flat 1/2, Shawlands, G41 3NY (“the Property”)

Parties:

Edzell Heritable Investment Company Ltd (“the Applicant”)

Mr Raymond Greig (“the Respondent”)

1. On 3 March 2021, an application was received from the Applicant. The application was made under Rule 65 of the Chamber Procedural Rules being an application for order for possession in relation to an Assured Tenancy. The following documents were enclosed with the application:-
 - (i) Tenancy Agreement;
 - (ii) Form AT6; and
 - (iii) Notice to Quit.
2. By letter dated 26 March 2021 further information was requested from the applicant including their views on the validity of the notice to quit as it did not provide an ish date; evidence of service of the notice to quit; that the AT6 refers to ground 10, only, and therefore the applicant was requested to provide a copy of the notice to quit sent by the tenant; that the AT6 submitted was incomplete; and that they were to provide a copy of the section 11 notice served on the local authority together with evidence of service.
3. The applicant responded on 1 April 2021 answering a number of issues raised in the further information letter. However, they did not address if the notice to quit which they had served was valid, as the ish date in the notice was in the following terms “*60 days from the date of posting this notice*”; the applicant did not explain how they considered that this

was a valid way in which to state the ish date and further they did not address the validity of the notice to quit in terms of whether 60 days from the date of posting did in fact fall on the actual ish date in the lease. Further they did not address the issue that the AT6 Notice was not a complete copy; or provide a copy of the notice to quit from the tenant which was required given that the ground referred to in the AT6 Notice was ground 10 (where the tenant has given notice to quit). The landlords also advised that they had not served a copy of the section 11 notice on the local authority.

4. It is noted that there was a letter submitted with the application dated 10 March 2020 and addressed to the tenant. It appears to have been a covering letter sent with the notice to quit. The letter had advised the tenant that the landlord wanted the property returned to them as they intended to refurbish the property. It appeared therefore that no notice to quit had been served by the tenant.
5. The tenancy agreement submitted provided that the lease term was 6 monthly from 3 March 2012. It therefore renewed on a 6 monthly basis.

DECISION

6. I have considered the applications 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;*
- (b) the dispute to which the application relates has been resolved;*
- (c) they have good reason to believe that it would not be appropriate to accept the application;*
- (d) they consider that the application is being made for a purpose other than a purpose specified in the application; or*
- (e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.*

(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. After consideration of the application, I consider that the applications should be rejected on the basis that they are frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.

REASONS FOR DECISION

8. “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. 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”*. It is that definition which I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived and has no prospect of success.
9. Section 18 of the 1988 Act provides as follows:-

18 Orders for possession.

(1)The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

(2)The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(3)If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections (3A) and (6) below, the Tribunal shall make an order for possession.

...

(6)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 I of Schedule 5 to this 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.

10. The AT6 Notice referred to one ground of recovery Ground 10. This ground relates to a situation where the tenant had served a notice to quit on the landlord; and thereafter not left the property. Rule 65 of the tribunal rules requires that evidence is provided that a ground to be relied is met. No evidence has been presented that the tenant issued a notice to quit on the landlord, and on the contrary the covering letter sent to the tenant on 10 March 2020 would tend to show that the only notice to quit served was by the landlord on the tenant. Accordingly, there is no evidence to support this application.

11. I would take the time to observe, that depending upon the ground being relied on by a landlord, in granting any order the tribunal will require to be satisfied that the contractual assured tenancy has been brought to an end, and there now exists a statutory assured tenancy. The original application referred to two further grounds of recovery grounds 6 and 9, however the AT6 Notice made no reference to these grounds and the applicant confirmed in their response of 1 April 2021 that they were no longer seeking to rely on those grounds. While it is therefore no longer an issue in this application, I would comment that the notice to quit does not provide a date on which the tenancy will come to an end, even if such wording is competent, (and I do not determine this matter) I calculate that the notice to quit was attempting to end the contractual lease on 10 May 2020. This is not an ish date given that the lease term is 6 monthly, renewing on 3 March and 3 September. A valid notice to quit would have had to end the lease at the end of either of two renewal periods for the landlord to be able to rely on it.

12. It appears therefore that the AT6 notice does not provide any ground which the landlord is able to rely on as he has been unable to provide evidence to support that ground.

13. For the reasons set out above, it seems to me that the application is frivolous as the statutory requirements are not met and the application should therefore be rejected

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:-

An applicant aggrieved by the decision of the Chamber President, or any Member acting under delegated powers, 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 of the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

Melanie Barbour

16 April 2021

Legal Member/Chair

Date