



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/19/0676

Re: Property at 36 Kylemore lane, Greenock, PA16 0QP (“the Property”)

Parties:

Robert Ross, Ms Vicky Cookson, c/o Maitlands Solicitors, (“the Applicant”)

Arlene Bowie, 36 Kylemore Lane, Greenock, PA16 0QP (“the Respondents”)

1. On 4 and 7 March 2019, an undated and unsigned application was received from the Applicant. The application was made under Rule 66 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under a Short Assured Tenancy. The following documents were enclosed with the application:-
 - (i) Part of the Tenancy Agreement (clauses 1-7 and 20);
 - (ii) Notice to Quit;
 - (iii) Section 33 Notice;
 - (iv) Notice to Local Authority section 11 Notice;
 - (v) Certificates of Services for the notice to quit, section 33 notice and section 11 Notice;
and
 - (vi) Statement of rent arrears

2. The Tenancy Agreement was in the name of the Fairlet Property Management and the Respondent. The Tenancy Agreement was signed and dated 4 June 2010. The Tenancy Agreement states that tenancy shall start on 4 June 2010. In terms of the tenancy the duration of the tenancy is stated as continuing until 5 December 2010 and then continuing on a monthly basis thereafter. There was no AT5 Form submitted with the application. The part of the Tenancy Agreement which was produced does not make reference to an AT5 Form having been given to the Respondent prior to the creation of the tenancy.

3. The Notice to Quit was dated 21 September 2018 and addressed to the Respondent. The Notice to Quit seeks vacant possession as at 31 October 2018. The Section 33 (1) (d) Notice was dated 21 September 2018 and addressed to the Respondent and provides that the landlord requires possession of the property on 31 October 2018.

DECISION

4. I have considered the application 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.”

5. After consideration of the application, I consider 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.

REASONS FOR DECISION

6. "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.

7. Section 33 of the 1988 Act provides as follows:-

33 - Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First –Tier Tribunal shall make an order for possession of the house if satisfied that—

(a) that the short assured tenancy has reached its ish;

(b) that tacit relocation is not operating;

(c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

8. The issue before me is whether recovery of possession of the property under Section 33 of the 1988 Act is competent. To recover possession of a short assured tenancy under Section 33 of the 1988 Act, the tribunal must be satisfied that the requirements of this section are met.
9. In this application the tenancy was for a period of 6 months from 4 June 2010 until 5 December 2010 and could be extended on a monthly basis thereafter. The "ish date" in this case therefore falls on the 5th day of every month. The Notice to Quit served in this

case was dated 21 September 2018 and stated that the Tenancy Agreement would terminate on 31 October 2018. The Notice to Quit does not therefore end the tenancy on the ish date. If the tenancy is in fact a short assured tenancy it has not therefore reached its ish and a contractual tenancy is for the time being in existence.

10. The Section 33 (1) (d) Notice was dated 21 September 2018 and sought vacant possession as at 31 October 2018. Section 33 of the Act provides that the period of notice under Section 33 has to be for a period of at least 2 months. As the Section 33 Notice submitted was dated 21 September 2018 and provides that possession was required by 31 October 2018, therefore the requirements of Section 33 (1) (d) have not been met.
11. Accordingly, both in relation to the failure to end the tenancy on the ish date and the failure to provide sufficient notice as required in terms of Section 33 (1) (d) and the requirements of Section 33 have not been met and an order for recovery of possession could not therefore be competently made by the First-Tier Tribunal.
12. For the reasons set out above, it seems to me that the application is frivolous as the statutory requirements are not met.
13. I would also note the following points in relation to the application, it was not clear from the supporting documentation provided that a Short Assured Tenancy had in fact been created; the Notice to Quit provides a period of 40 days' notice, however as I have only had sight of part of the tenancy agreement, I do not know if sufficient notice had been given in this case in terms of the tenancy agreement; clarification of the title and interest of the Applicants should have been provided given that the Applicants were different to name of the landlord who appeared on the tenancy agreement; and the Applicants were Robert Ross and Vicky Cookson, however the Notice to Quit and Section 33 Notice was in the name of Robert Ross only, and no clarification was given as to why only Robert Ross was named on these notices.

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

Legal Member/Chair

17.3.19

Date