



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/19/0726

Re: Property at 9 Rires Road, Leuchars, Fife, KY16 0EE (“the Property”)

Parties:

Mrs Jennifer Lewis-Flannigan, Mrs Grace Lewis-Flannigan (“the Applicant”)

Miss Tracey Mill (“the Respondent”)

1. On 5 March 2019 an application was received from the Applicant. The application was made under Rule 109 of the Chamber Procedural Rules being an application by a private landlord for eviction of a private residential tenancy. The following documents were enclosed with the application:-
 - (i) Notice to Leave;
 - (ii) Copy of Rental Accounts; and
 - (iii) Notice to Local Authority section 11 Notice.
2. On 18 March 2019 evidence of service of the Notice to Leave was provided by the Applicant which consisted of a copy email sent to the Respondent on 24 January 2019.

DECISION

3. I 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."

4. After consideration of the application, the attachments and correspondence from the Applicant, 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

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. 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.
6. The notice to leave, which is dated 18 January 2019, gives notice in Part 4 thereof that an application will not be submitted to the Tribunal for an eviction order before 4 March 2019. The notice is invalid and ineffectual in respect that it fails to specify the correct day from which the landlord under the tenancy is entitled to make an application for an eviction order to the First-Tier Tribunal.

7. Section 61 (1)(b) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) provides that notice to leave “*specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-Tier Tribunal.*” Section 62(4) of the Act provides that “*the day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54 (2) will expire.*” Section 62(5) of the Act provides that “*for the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.*”

8. Section 54(1) provides that “*a landlord may not make an application to the First-Tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*” “The relevant period” is defined in subsection (2) as beginning “*on the day the tenant receives the notice to leave from the landlord and expires on the day falling 28 days after it begins if subsection (3) applies.*” In this application subsection (3)(b)(i) applies.

9. In this application the notice was dated 18 January 2019; subsection (3)(b)(i) applies in this application and so the relevant period is 28 days; and therefore 4 March 2019 cannot be the date when the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-Tier Tribunal. The notice to leave is invalid as it specifies a date which is in excess of the 28 day notice period, and does not therefore meet the terms of the statutory requirements. This application has therefore no prospect of success and must be rejected upon the basis that it is frivolous.

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

25.3.19

Date