



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/20/0781

Re: 60 Main Street, Ochiltree, KA18 2PB ("the Property")

Parties:

Mrs Helen McFarlane ("the Applicant")

Property Matters Online ("the Applicant's Representatives")

Mr John Pllu ("the Respondent")

Tribunal Member:

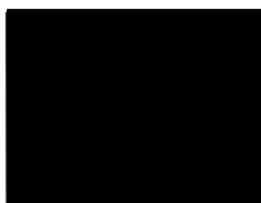
Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be dismissed 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 109 on 4 March 2020. The grounds for possession/eviction were stated to be Ground 1 that the Landlord needs the Property for them or their spouse. The following documents were enclosed with the application:
 - (i) Notice to Quit dated 13 November 2019;
 - (ii) Section 33 Notice dated 13 November 2019;
 - (iii) Section 11 Notice to local authority.



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 has clearly been drafted on the basis that the tenancy created was a Short Assured Tenancy (**SAT**). The application is made under Rule 109 which applies to Private Residential Tenancies (**PRT**) which came in to being with effect from 1 December 2017. The Section 33 Notice specifies that the tenancy commenced on 10 January 2018. The tenancy was accordingly a PRT under the Private Housing (Tenancies) (Scotland) Act 2016 (**2016 Act**) and could not be an SAT under the Housing (Scotland) Act 1988. In order to terminate a PRT the provisions of the 2016 Act need to be complied with and the tenancy terminated by service of a Notice to Leave in the appropriate form together with the appropriate period of notice in accordance with sections 54(2) and 62 of the 2016 Act.

5. The PRT has clearly not been terminated in accordance with the 2016 Act and the Tribunal could not grant the order sought.

6. 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. [REDACTED]

[REDACTED]

19 March 2020

ALAN STRAIN

Date

Legal Member/Chair