



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/19/1216

Re: 91 Honeywell Crescent, Chapelhall, ML6 8XW ("the Property")

Parties:

Mr Barry Hart ("the Applicant")

Ms Karen Owens ("the Respondent")

Hardy MacPhail Solicitors (Applicant's Representatives)

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 65 on 23 April 2019. The grounds for possession/eviction were stated to be Grounds 11 and 12 of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**). The following documents were provided:
 - (i) Short Assured Tenancy Agreement (**SAT**) dated 5 March 2018;
 - (ii) Section 11 Notice;

- (iii) Notice to Quit dated 17 January 2019 which states the date for removing as 28 February 2019; and
 - (iv) AT5 Notice dated 5 March 2018;
 - (v) AT6 dated 1 April 2019;
 - (vi) Sheriff Officer's Certificates of Service of section 11, Notice to Quit and AT6.
2. On 7 May 2019 the application was considered by the Tribunal. By Letter from the Tribunal dated 7 May 2019 the Applicant's agent was requested to provide the following information:
- (a) Comments on the validity of the Notices given the Tenancy was created after 1 December 2017.
3. The Applicant was advised that if the information was not provided by 21 May 2019 then the application may be rejected.
4. No response was received.

Reasons for Decision

5. 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."

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. 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*".

7. The application purports to proceed under Rule 65 in terms of termination of an SAT under Grounds 11 and 12 of the 1988 Act yet the tenancy was created after 1 December 2017 which would mean that any tenancy created was a Private Residential Tenancy regulated by the Private Housing (Tenancies) (Scotland) Act 2016 (**2016 Act**). There is no evidence of service of a Notice to Leave in

accordance with the 2016 Act. The Applicant's agents have not provided a response to the Tribunal's request for written submissions and have been warned of the consequences of failing to do so.

8. 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. The Tribunal cannot grant the order sought given the application has been raised under the incorrect legislation and the correct Notices appear not to have been served. Furthermore, the Tribunal consider that there is good reason why the application should not be accepted in light of the failure to provide documentation following a request from the Tribunal and the failure to lodge necessary documentation in compliance with the Rules. 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.

Legal member/Chair

Date

JUNE 2019