



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/19/1383

Re: Property 23 Lochend Avenue, Edinburgh, EH7 6DT (“the Property”)

Parties:

Miss Nga Si Ho (“the Applicant”)

Joanna Davidson, Michelle O’Dwyer (“the Respondents”)

1. On 8 May 2019 an 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) Tenancy Agreement in the name of the previous landlord and the Respondents
 - (ii) AT 5 document
 - (iii) Notice to Quit for each tenant;
 - (iv) Section 33 Notice for each tenant;
 - (v) Notice to Local Authority section 11 Notice;
 - (vi) Certificates of Services for the notice to quit, section 33 notice documents to both tenants
2. The Tenancy Agreement commenced on 13 January 2017. In terms of the tenancy the duration of the tenancy is stated as continuing until 31 July 2017 and then continuing on a monthly basis thereafter.
3. The Notice to Quit documents were dated 21 February 2019 and addressed to the Respondents. The Notice to Quit seeks vacant possession as at 28 April 2019. The Section 33 (1) (d) Notice documents were dated 21 February 2019 and addressed to the Respondent and provides that the landlord requires possession of the property on 28 April 2019. All 4 documents were served by Sheriff Officers on 22 February 2019.

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 from 13 January 2017 until 31 July 2017 and could be extended on a monthly basis thereafter. The “ish date” in this case therefore falls on the last day of every month. The Notice to Quit documents served in this case stated that the Tenancy Agreement would terminate on 28 April 2019.
10. The Applicant was asked to clarify the date stated as the end date and explained in her email of 4 June 2019 that she served the notices in February and thus the last date of February was the 28th. She then calculated 2 months from that date.

11. However, this is not how monthly periods are calculated. If the tenancy end falls to the end of the month then the end date to which notice must be given is the last day of the month. For the month of April this is the 30th of April and not the 28th. The relevant date must be taken from the ish date, not two months from the date notice is given. The ish date in April is 30 April 2019. The Notice to Quit does not therefore end the tenancy on the ish date. The short assured tenancy has not been validly terminated and a contractual tenancy is for the time being in existence. Tacit relocation continues to operate.
12. The Section 33 (1) (d) Notice similarly did not give two months notice to the end date of the tenancy.
13. Accordingly 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.
14. For the reasons set out above, it seems to me that the application is frivolous as the statutory requirements are not met.

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.

Mrs Petra Hennig-McFatrige

Legal Member/Chair

13.6.15

Date