



Decision under Rule 5 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017, as amended ("the Rules")

Chamber Ref: FTS/HPC/EV/19/1523

Re: 93B Dalrymple Street, Girvan, Ayrshire, KA26 9BS ("the Property")

Parties:

Mrs Belinda Lundy ("the Applicant")

Bruach Property Ltd, ("the Applicant's Representative")

Miss Dawna Murphy ("the Respondent")

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should not be accepted in accordance with Rule 5 of the Rules.

Background

1. The application was received by the Tribunal under Rule 65 on 17 May 2019. In terms of the application, the Applicant was seeking an order for eviction in terms of Grounds 8, 9 and 10 of the Housing (Scotland) Act 1988 ("the 1988 Act") but the documents produced in support of the application were a copy of a Short Assured Tenancy, a Notice to Quit and a Section 33 Notice.
2. On 21 May 2019, the application was considered by the Tribunal and a request for further information was issued to the Applicant's representative, requesting same by 28 May 2019. No response was received. The application was further considered by the Tribunal and a further request for further information issued to the Applicant's representative on 11 June 2019, requesting same by 25 June 2019. No response was received. A reminder was issued to the Applicant's representative dated 8 July 2019, requesting the further information by 22 July 2019. A response was received from the Applicant's representative dated 12 July 2019, stating that the person dealing with the application was on annual leave and requesting a further copy of the Tribunal's letter dated 11 June 2019. The Tribunal responded on 16 July 2019, attaching a copy of the previous letter dated 11 June 2019. On 16 July 2019, the Applicant's representative responded,

answering one point previously raised by the Tribunal but not providing the additional documentation/information which had been requested by the Tribunal. Again, it was stated that the person dealing with the application was on annual leave until 24 July 2019 and indicating that further information would be provided to the Tribunal then. No further response was received. The application was further considered by the Tribunal on 6 August 2019 and a further request for information issued to the Applicant's representative on 7 August 2019. No further response has been received.

Reasons for Decision

5. The Tribunal considered the application in terms of Rule 5 of the Rules. That Rule provides:-

“Requirements for making an application

5.—

(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.”

6. An application under Rule 65 of the Rules requires specified documentation to be lodged with it, as does an application under Rule 66:

Application for order for possession in relation to assured tenancies

- 65. Where a landlord makes an application under section 18(1) (orders for possession) of the 1988 Act, the application must—

(a) state—

(i) the name, address and registration number (if any) of the landlord;

(ii) the name, address and profession of any representative of the landlord;

(iii) the name and address of the tenant; and

- (iv) the possession grounds which apply as set out in Schedule 5 of the 1988 Act;
- (b) be accompanied by—
 - (i) a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;
 - (ii) a copy of the [notice served on the tenant by the landlord] of intention to raise proceedings for possession of a house let on an assured tenancy;
 - (iii) a copy of the notice to quit served by the landlord on the tenant (if applicable); and
 - (iv) evidence as the applicant has that the possession ground or grounds has been met;
 - [(v) a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003 (if applicable), and
 - (vi) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and]
- (c) be signed and dated by the landlord or a representative of the landlord.

Application for order for possession upon termination of a short assured tenancy

- **66.** Where a landlord makes an application under section 33 (recovery of possession on termination of a short assured tenancy) of the 1988 Act, the application must—
 - (a) state—
 - (i) the name, address and registration number (if any) of the landlord;
 - (ii) the name, address and profession of any representative of the landlord; and
 - (iii) the name and address of the tenant;
 - (b) be accompanied by a copy of—
 - (i) the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;
 - (ii) the notice by landlord that the tenancy is a short assured tenancy;
 - (iii) the notice given to the tenant under section 33(1)(d) of the 1988 Act;
 - (iv) the notice to quit served by the landlord on the tenant;
 - (v) a copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003 (if applicable), and
 - (vi) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and

(c) be signed and dated by the landlord or a representative of the landlord.

7. In this application the Applicant has been requested several times to provide information and documentation necessary for acceptance of the application. In particular, the Applicant had been asked to clarify whether they wished to proceed under Rule 65 or 66 of the Rules. If proceeding under Rule 65, they had been asked to submit the AT6 Notice. They had also been asked to provide a copy Section 11 Notice to the relevant local authority and further information in respect of service of the Notice to Quit and other formal Notice(s). They have been given a reasonable period of time to do so and have not done so. In accordance with Rule 5 of the Rules, the Tribunal considers that the application has not been lodged in the required manner and should not be accepted.

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.

Nicola Weir

Legal Member/Chair

2/9/2019

Date