Housing and Property Chamber
First-tier Tribunal for Scotland

DECISION AND STATEMENT OF REASONS OF JAN TODD, LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT

Under Rule 8 and 5 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Procedural Rules")

in connection with

Case Reference: FTS/HPC/EV/19/1668

Mulberry Homes Limited, 45 Preston New Road, Blackburn, Lancashire BB2 6AE **("the Applicant")**

Mr James Meldrum, Ms Jacqueline MacDonald 37 Hartlaw Crescent, Glasgow G52 2JJ **("the Respondent")**

1. On 29th May 2019, an application was received from the Applicant. The Application was made under Rule 65 of the Procedural Rules, being an application for eviction in relation to a tenancy. However in clause 5 of the application form the Applicant reference is made to an order for possession on the basis of Ground 12 and 6 (rent arrears) of Housing (Scotland) Act 1988.
2. The following documents were enclosed with the application:-
    - Copy of Move In agreement between the parties which details a completion date of 14th October 2013
    - AT6 notice dated 16th May 2019 and stating date proceedings will not be

raised before as 20th June 2019

- Copy Notice to Quit dated 16th May 2019 giving notice to Quit by 20th June 2019
- Certificate of posting dated 16th May 2019 and track and trace showing item delivered on 17th May 2019
- S11 Notice to Glasgow City Council stating proceedings will not be raised before 29th May 2019
- Decree in absence granted by Glasgow Sheriff Court in favour of Mulberry Homes against James Meldrum and others for £6180
- Copy certificate of change of name from Paddle Limited to Mulberry Homes Limited
- Decision an statement of reasons from case FTS/HPC/EV/19/0102

The Tribunal wrote to the Applicant on 11th June advising that it accepted the Move In Agreement constituted an assured tenancy but requested further information, namely asking the Applicant to address the Tribunal on why it considered 20th June 2019 to the ish date given that the lease will tacitly relocate for the same term as the original lease. The Applicant responded on 1st July and stated

"The Notice was sent out First Class on 16th May 2019 giving 28 days notice which would have brought it to expire on 14th June.

We stated 20th June on the Notice to cover for there being a delay in the Recorded Delivery item being picked up – which it turned out there was not in this case".

The Tribunal wrote again to the Applicant on 8th July 2019 asking the Applicant to provide the Tribunal with the following:-

You were asked to address the Tribunal on why you consider 20th June 2019 to be the ish date of the tenancy and thus the date inserted into the Notice to Quit.

Your response has not addressed the question. You have simply indicated that you chose that date because it gave a period of notice which you believed appropriate. The

effective date in a Notice to Quit must specify a date which is an "ish" date of the tenancy.

Please explain why you believe that 20th June 2019 is an ish date in respect of this property. The Previous request made reference to the doctrine of tacit relocation. The only document which has been produced to the tribunal regarding the occupation of the property is the "Move in Agreement" which is dated 14th October 2013 and which bears to allow the occupant twelve months. There are no provisions within this agreement which create any other period of occupancy.

The letter went on to ask for the necessary information by 22nd July 2019 and stated that if there was no response by that time the President may decide to reject the application. The Applicant replied on 17th July explaining that the rental date is assumed to be the 14th day of the month so the ish date is the 14th day of June. 28 days' notice should be given from the 14th so we hope we are not to be penalized for trying to secure proof of service by adding a further 6 days on the notice." The Applicant went on to say the put down 20th June to give time for the Recorded delivery letter giving the Notice to be picked up.

The Tribunal issued another letter on 5th August referring to previous correspondence and once again asking to be addressed on why "in legal terms the "ish date" is 20th June." The letter goes on to refer to the Move In Agreement with a date of 14th October being for a period of 12 months and so why did the Applicant believe that 20th June was an ish date. There has been no response from the Applicant to this request.

DECISION

3. I considered the application in terms of Rule 5 and 8 of the Procedural Rules. Those Rules provide:-

4.

"Rejection of application

Rule 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 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.

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, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1) (c) of the Procedural Rules.

REASONS FOR DECISION

6. The Tribunal has requested further information from the applicant in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1) (a) of the Procedural Rules. '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".* It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

7. the following issues have been identified in the paperwork submitted:-

    a. The Notice to Quit does not specify a valid isdate. The Move In Agreement is a one page document which does contain the essentials of a tenancy agreement namely subjects, rent and duration.
    b. The Notice to Quit does provide for over 28 days' notice the minimum required by Section 112 of the Rent Scotland Act 1984 but it does not refer to

a valid ish (or termination) date therefor it is invalid.

c. The tenancy has commenced on 14th October 2013. The Agreement specified that the Respondents were to be given occupation of the property for twelve months with payment of £482 per month being due to them. In the absence of any provision in the Move in Agreement to the contrary it is assumed tacit relocation is in operation and has operated to continue the tenancy from one year to the next on 14th October 2013.

d. The Notice to Quit was served calling on the tenant to leave the premises on 20th June 2019 this is not an ish date, not being the annual date on which the tenancy automatically renews if not validly terminated, namely 14th October.

e. The Applicant advised that he believed the ish date to be 14th June but added another 6 days on to allow for service. Even if the ish date was 14th June which it is not, as this is an annual tenancy, then the Applicant has mistakenly allowed extra time for service at the end of the process when if he wishes to ensure adequate notice, which is a reasonable step, he requires to ensure it is sent earlier than the 28 days notice required but still ensuring the Notice requires the tenant to leave on the ish date.

f. Unless there is a valid Notice to Quit which terminates the contractual tenancy, S18(6) of the Housing Scotland Act 1988 requires that a s19 notice cannot be used in a tenancy that is not a statutory assured tenancy unless the full grounds are set out in the lease. The full grounds for termination are not referred to in the Move In Agreement and therefore the contractual tenancy needs to be terminated before a S19 notice (an AT6 notice) can be used.

8. After consideration of the application, the attachments and correspondence from the Applicant the Legal Member considers that the Application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1) (a) and Rule 8(1)(c) of the Rules. In addition the applicant has failed to respond to the Tribunal's request for further information, in breach of Rule 5 and as a result information the Tribunal requires in order to determine whether or not the application is frivolous, misconceived, and has no prospect of success has not been made available. In terms of

Rule 5 the application should not be accepted as outstanding submissions have not been received. I consider that the applicant's failure to respond to the Tribunal's request also gives me good reason to believe that it would not be appropriate to accept the application in circumstances where the applicant is apparently unwilling or unable to respond to the Tribunal's enquiries in order to progress this application

9. Accordingly, for this reason, this application must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of both Rule 5 and Rule 8(1)(c) of the Procedural Rules.

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 Legal 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 the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

Jan Todd
Legal Member
5th September 2019