



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/19/1735

Re: 59 Dunlop Terrace. Ayr, KA8 0SW ("the Property")

Parties:

Mr Robert McNellie and Mrs Anne McNellie ("the Applicants")

The McKinstry Company ("Applicants' Representative")

Miss Amanda Stewart and Mr David Anderson ("the Respondents")

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 65 on 5 June 2019. The grounds for possession/eviction were stated to be Grounds 8, 11 and 12 under Schedule 5 to the Housing (Scotland) Act 1988 (**Act**). The following documents were enclosed with the application:
 - (i) Letting Contract dated 17 January 2014 for a rolling 6 month period in respect of the Property signed by the First Respondent only;
 - (ii) AT6 dated 23 April 2019 with recorded delivery receipt;

- (iii) Schedule of Rent Arrears; and
- (iv) Section 11 Notice;

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 seeks to proceed under Rule 65. In order to do so the tenancy must have been validly terminated and tacit relocation not be operating. No Notice to Quit has been served upon the Respondents. The tenancy accordingly continues by tacit relocation until it has been validly terminated.

5. Furthermore, The Tribunal cannot grant an order for recovery of possession unless the tenancy has either been terminated or the tenancy provides for termination on one of the grounds specified in Schedule 5 to the 1988 Act. The Letting Contract does not provide for termination on the grounds specified in Schedule 5 to the 1988 Act.

6. As the tenancy has not been validly terminated the Tribunal cannot grant the order sought. 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.

Alan Strain

Legal Member/Chair

19 June 2019

Date