Housing and Property Chamber
First-tier Tribunal for Scotland

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

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

in connection with

8 Brent Gardens, Glasgow, G46 8GB

Case Reference: FTS/HPC/EV/19/2081

AQA Property Limited ("the applicant")
Turnbull McCarron, Solicitors ("the applicant's representative")
Ms Cheryl McLaughlin ("the respondent")

1. On 4 July 2019, an application was received from the applicant. The application was made under Rule 65 of the Procedural Rules being an application for recovery of possession of a property let on an Assured Tenancy. The following documents were enclosed with the application:-
    - Copy Short Assured Tenancy Agreement dated 31 January 2014;
    - Copy AT5 dated 31 January 2014;
    - Copy Simple Procedure Claim Form lodged on 26 July 2018, together with associated correspondence and court documents of various dates, including decree for payment dated 5 November 2018;

- Copy Charge for Payment in execution of the said decree, dated 8 January 2019;
- Copy Rent Statement;
- Copy Notice to Quit (undated and unsigned); and
- Copy Form AT6 (undated and unsigned).

2. Following a request for further information from the Tribunal, the applicant's representative provided dated and signed versions of the Notice to Quit and Form AT6, together with a copy of a sheriff officer's certificate of service of those. All are dated 14 March 2019.

DECISION

3. I considered the application in terms of Rule 8 of the 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."

4. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that it appears to be frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules, and 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

5. Firstly, before I go on to explain the reasons why this application is rejected, I feel compelled to comment on one glaring matter arising out of this application. That is the Simple Procedure Claim and associated papers lodged by the applicant in support of this Application. In terms of section 16 of the Housing (Scotland) Act 2014, from 1 December 2017:-

"**16 Regulated and assured tenancies etc.**

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal—

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence."

The Simple Procedure action sought payment of rent arrears arising out of an Assured Tenancy. That is unquestionable. It follows that Glasgow Sheriff Court did not have jurisdiction to determine that action, and ought to have dismissed it. I am extremely concerned that decree has been granted by Glasgow Sheriff Court in that case, and that a charge for payment has been served (and presumably has expired unsatisfied) in execution of that decree, with the resultant ability of the applicant to seek to sequestrate the respondent. There has been, in my view, the most grievous oversight in this case, and **I would expect the applicant's representatives, as officers of the Court, to now take immediate remedial steps in respect of both the Decree and the Charge insofar as they have not already done so**.

6. That all being said, I turn now to the application at instance.

7. '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.

8. This application proceeds under section 18 of the Housing (Scotland) Act 1988. In terms of the 1988 Act:-

"18 Orders for possession.

(1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

… (6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9... Ground 10, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

19 Notice of proceedings for possession.

(1) The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—

(a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or

(b) the Tribunal considers it reasonable to dispense with the requirement of such a notice.

(2) The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.

(3) A notice under this section is one in the prescribed form informing the tenant that—

(a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and

(b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.

(4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—

(a) two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and

(b) in any other case, two weeks.

(5) The First-tier Tribunal may not exercise the power conferred by subsection (1)(b) above if the landlord seeks to recover possession on Ground 8 in Schedule 5 to this Act."

9. In terms of section 18(6) of the Housing (Scotland) Act 1988, the Tribunal shall not make an order for possession of a house which is, for the time being, let on an assured tenancy (not being a statutory assured tenancy) unless the conditions of subsection (6) are met, which they are not in this case. It follows that, to be entitled to recovery of possession of a property let on an assured tenancy, the applicant would have had to have first terminated the contractual tenancy. One method of doing so would be by bringing the contract to an end at its natural expiry by service of a notice to quit.

10. A notice to quit is a legal document which, when properly served, brings a tenancy agreement to an end at its ish. It has no other effect. For example, the service of a notice to quit does not terminate a tenancy at some other, randomly selected, arbitrary date. It serves only as a notice to the other party to the lease that tacit relocation is to stop operating at the next ish.

11. In this case, the tenancy agreement commenced on 31 January 2014 and the initial period terminated on 30 July 2014. In terms of clause 2, the tenancy agreement then continued on a monthly basis by tacit relocation. As such, the next available ish after 30 July 2014 was 30 August 2014, and then 30 September 2014, and so on. Further, clause 2 provided that the period of notice required to be given by either party was two months.

12. The Notice to Quit was served on 14 March 2019. In my view, at that date, the next available ish that the notice could have specified as an end date for the tenancy was 30 May 2019, being an ish date not less than two months after

service of the Notice to Quit. That being so, it is my opinion that the Notice to Quit is invalid. The contractual tenancy is continuing monthly by tacit relocation. In terms of section 18(6), the Tribunal cannot make the order sought where the contractual tenancy remains in operation and the criteria in that section is not satisfied.

13. For those reasons, it is my view that the application is frivolous within the meaning of Rule 8(a). Further, it is my view that it would be inappropriate in these circumstances to accept this application in terms of Rule 8(c). I reject the application.

14. For completeness, even if the Notice to Quit had been valid (which it is not), or if the criteria in section 18(6) was satisfied (which it is not), I would still have rejected this application. That is because the Form AT6, which is a notice in terms of section 19 of the 1988 Act, is also invalid.

15. A Form AT6 is split into four parts. Part 1 specifies the name and address of the tenant. Part 2 specifies the name, address and telephone number of the landlord, and provides which ground or grounds for eviction the landlord intends to rely upon. Part 3 details the reasons why the landlord contends that the ground or grounds in question are satisfied. Part 4 specifies the earliest date when proceedings for eviction may be raised.

16. Turning to the AT6 in this case, I note three specific failures by the applicant. Firstly, at Part 2, the Landlord has not provided a telephone number. The principal purpose of this notice is to put the tenant on notice that he or she is in breach of the tenancy agreement and to afford the tenant an opportunity to purge that breach. The reason why the landlord is required by Part 2 of the AT6 to specify an address and telephone number is to assist the tenant by giving the tenant all the information that the tenant can possibly require in order to purge the breach.

17. It is for that reason that Part 2 is deficient in another respect. It is not sufficient to specify by reference to number and a generic heading which ground is said to apply. What is required at Part 2 is to specify both the Ground number and the full text of the Ground as set out in Schedule 5 to the 1988 Act. Indeed, the AT6 specifies, under the space provided to list the grounds:- "(give the ground number(s) and fully state ground(s) as set out in Schedule 5 of the Housing (Scotland) Act 1988: continue on additional sheets of paper if required)". The applicant has not done so in this case, and so the notice is defective.

18. Turning then to Part 3, the applicant has simply repeated that the reason for seeking eviction is "Ground 8 of rent arrears"). That is wholly lacking in specification. Again, the purpose of the AT6 is to give detail to the tenant. The AT6 specifies, under the space provided to list the reasons:- "(state particulars of how you believe the ground(s) have arisen: continue on additional sheets of paper if required)". What is required here is to specify, for example, (i) the value of rent arrears, (ii) how many months' arrears that equates to, and (iii) the period in which the arrears have accrued. The information provided by the applicant in this notice gives no notice of the basis of claim. For all of those reasons, it is defective.

19. For completeness, I note that the applicant's representative also served a letter with the Notice to Quit and AT6, the terms of which asserted that rent arrears in the sum of £4,297.95 were outstanding and due. In email correspondence to the Tribunal dated 7 August 2019, the applicant's representative suggested that this letter formed part of the "official correspondence". The inference I take is that the applicant's representative is inviting the Tribunal to read the covering letter as part of both the Notice to Quit and Form AT6. However, I cannot do so. The covering letter is only a covering letter. It is not an operative document. The Notice to Quit and Form AT6 are the documents to be considered in this application. Had those documents referred to the terms of the covering letter in some way, then I may have had some sympathy for the submission that its terms were part of

the notices. However, they do not so refer, and the letter is therefore not part of the notices in my opinion.

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.

Andrew Upton
Legal Member
19 August 2019