



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.

In respect of application by Miss Julie Ross of Raeburn Hope solicitors on behalf of Mr Ka Yu Cheng in terms of Rule 66 of the Rules.

Case reference FTS/HPC/EV/19/2270

At Glasgow on the 5 August 2019, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1)(a) and (c) of the Rules.

1. This is an application on behalf of by Mr Ka Yu Cheng , the owner and landlord of the property at 23 G John Street Helensburgh, G84 8XL ‘the property’, for recovery of possession of the property in terms of Rule 66.
2. The application was made on the applicant’s behalf by Miss Julie Ross of Raeburn Hope Solicitors dated 18 July 2019 and was stamped as being received by the Tribunal on 22 July 2019.
3. The application was accompanied by the following:-
 1. Tenancy agreement for let of the property from 2 May 2008 until 2 November 2008 and month to month thereafter.
 2. Notice to quit dated 16 April 2019.
 3. S33 notice dated 16 April 2019.
 4. Sheriff officer’s execution of service of 2 and 3 above dated 23 April 2019.
 5. AT5 dated 2 May 2008.
 6. Residential property management agreement between the applicant and his solicitors Raeburn Hope Solicitors.

4. There is a fundamental problem with this application which relates to the notice to quit. I have considered the notice to quit carefully and considered whether the notice to quit meets the legal requirements of such a notice. I consider that the notice to quit issued here is invalid. The notice to quit does not tie in with the 'ish' date provided for in the tenancy agreement. The agreement provides for an initial term of 6 months from 2 May 2008 until 2 November 2008 and month to month thereafter. The ish must therefore be on or around the 2 of the month. The notice to quit lodged gives an ish date of 27 June 2019. Stalker in Evictions in Scotland at page 35 states:

If the date stated on the notice to quit is earlier than the ish, the notice is ineffective; the landlord cannot call on the tenant to leave before the tenant is contractually bound to do so. If the date stated on the notice is later than the ish date the notice is similarly ineffective to prevent tacit relocation occurring at the ish.

I consider the notice to quit lodged to be ineffective and invalid. The notice to quit does not tie in with the ish date and it does not therefore prevent tacit relation from taking place. An application in terms of s33 of the Housing (Scotland) Act 1988 cannot therefore succeed as one of the statutory requirements of an application in terms of s33 of the Act is that the tenancy has been brought to an end and tacit relocation is not operating.

5. There is one further problem with the application which could possibly have been addressed by the applicant's solicitors if the notice to quit had been valid namely that there is no s11 notice lodged with the application.
6. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if **"they consider that an application is vexatious or frivolous"**.
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".
8. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application. It is incomplete and there is a fundamental defect with the notice to quit. Even if the other item referred to at 5 above was produced to the satisfaction of the tribunal the application would have no reasonable prospects of success.

NOTE: What you should do now.

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.



Lesley Anne Ward

Legal Member