

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of Helen Forbes, 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/19/3516

Re: 146A Budhill Avenue, Glasgow, G32 0PJ ("the Property")

Parties:

Mr Roderick Muir ("the Applicant")

Miss Kelly McGuinness ("the Respondent")

Tribunal Member:

Helen Forbes (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 1st November 2019. The grounds for possession/eviction were stated to be Ground 8. The following documents were enclosed with the application:
 - (i) Short Assured Tenancy commencing 31st July 2014;
 - (ii) AT6 dated 11th July 2019 which stated Ground 8" as the basis for recovery of possession and did not complete the required reasons in Part 3;
 - (iii) Ledger of client account;
 - (iv) Copy section 11 Notice to Local Authority;
 - (v) Sheriff Officer's Certificate of Intimation dated 16th July 2019;
 - (vi) Spreadsheet showing payments.

2. The application was considered by the Tribunal and further information was requested by:

- (i) Letter dated 1st November 2019, whereby the Applicant was asked to provide proof of service of the Section 11 Notice on the Local Authority;
- (ii) Letter dated 25th November 2019, whereby the Applicant was asked to explain why 2nd August 2019 had been chosen as the ish date, and why only 18 days notice had been given in the Notice to Quit;
- (iii) Letter dated 18th December 2019, whereby the Applicant was asked to provide (a) the basis upon which it was stated that the lease tacitly relocates annually; and (b) a rent statement for the property as the client ledger provided related to other properties;
- (iv) Letter dated 24th January 2019, whereby the Applicant was asked to provide (a) an amended application in the name of the Executor of the Applicant and evidence of the Executor's title to make the application; (b) any written submissions with reference to authorities about whether the notices had been served on the Respondent, who vacated the Property on 10th October 2018 and now lives in Spain; (c) an address for the Respondent or an application for service by advertisement on the Respondent; (d) copy AT5 Notice served on the Respondent prior to the creation of the tenancy; and (e) any written submissions on the validity of the AT6 Notice.

3. The Applicant responded to the letter of 27th November 2019 by letter dated 9th December 2019 with further information concerning the whereabouts of the Respondent and the tacit relocation of the lease. Since that date, no further information has been provided by the Applicant.

4. The application was considered again by a Legal Member on 19th February 2020.

Reasons for Decision

5. 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."

6. '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"*.

7. The application seeks to proceed under Rule 65 and Ground 8 under Schedule 5 to the Housing (Scotland) Act 1988 (Act). In order to proceed under Ground 8 a valid notice under section 19 of the Act must have been served. The AT6 relied upon by the Applicant does not include the reasons required at Part 3 of the AT6 to inform the Respondent why they are seeking possession on the relevant ground. The AT6 is invalid. Furthermore, no evidence has been provided that service upon the Respondent has taken place. Service by Sheriff Officers took place at the property on 16th July 2019, some 9 months after the Respondent is known to have vacated the property and moved to Spain. Finally, the application has been raised in the name of a deceased person and no attempt has been made by the Applicant to provide an amended application form in the name of the Executor for the deceased.

8. In light of the above reasons 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.

Helen Forbes

19 February 2020

Legal Member/Chair

Date