



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 the firm of G and H Reid Properties in terms of Rule 65 of the First Tier Tribunal for Scotland (Housing and Property Chamber(Procedure) Regulations 2017 (erroneously referred to in the application as Rule 65).

Case reference FTS/HPC/EV.18/0088

27th March

At Glasgow on the ~~April~~ 27th 2018, 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)(C) of the Rules.

1. The application is dated 5 January 2018 and was received by the Tribunal on 10 January 2018. The application was initially submitted under Rule 65 but by email on 9 February 2018 the applicant's agents confirmed that the application should be under Rule 66 and not Rule 65.
2. This is an application by landlords, the firm of G and H Reid Properties, against the tenant Christopher Dennis , for recovery of possession of the heritable property at 20 Craigiebarn Road, Dundee, DD4 7PG let by the applicant to the tenant on a short assured tenancy under the lease between the parties dated 31 April 2017 for the period 1 May 2017 until 30 April 2018. The application is in terms of section 18 of the Housing (Scotland) Act 1988. The grounds for recovery of possession are grounds 8, 11 and 12 as narrated in the AT 6 form dated 12 December 2017. The lease has not yet reached it's ish date.
3. Section 18(6) of the 1988 Act provides:-

The sheriff 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

L A Ward

- (a) The grounds 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 1) Ground 15 or Ground 17.
 - (b) (b) the terms of the tenancy make provision for it to be brought to an end on the grounds in question.
4. The grounds referred to in the AT 6 in this application are grounds referred to in section 18(6)(a) of the Act, namely grounds 8, 11 and 12.
 5. The copy tenancy agreement lodged with the application makes no mention of the grounds for recovery of possession set out in schedule 5. The applicant's agents have been asked by the tribunal administration for clarification on 5 February 2018 and 9 March 2018. On 19 March 2018 they stated:-

The Applicant was unaware that the Tenancy Agreement required specific provision to enable eviction under Grounds 8, 11 and 12...Under Schedule 1 clause 10 of the lease, the applicant is entitled to terminate the lease and is, therefore, entitled to regain possession of the property.

6. Clause 10 of the lease provides:-

In the event of the tenant contravening any of the obligations of the lease or any of the terms of the Housing (Scotland) Act 1988 , the landlord shall have the option to terminate this lease forthwith and to take steps to have the tenant terminate this lease forthwith, and to take steps to have the tenant removed from the subjects of let , all without prejudice to the landlord's claim for rent due to damages.

7. Having regard to the terms of section 18(6) of the Act and to the case law in relation to this matter, namely the decision of Sheriff Jamieson in Eastmoor LLP-v- Keith Bulman 2-014 WL 40163001 and Sheriff Principle Wheatley in Royal Bank of Scotland –v- Boyle 1999 Housing Law Reports 63, I am not satisfied that the terms of section 18(6) have been complied with. As referred to by Sheriff Jamieson at para 30:-

"the parties must contract in such a way that the contract itself sets out the grounds for bringing an end to the lease prior to the determination of its ish. It is not sufficient for the tenancy agreement merely to refer to the number of the ground in schedule 5. Best practice is to refer to its number and terms ad longum; if the grounds are summarised, the mmary must contain the "essential ingredients" of the ground in question.

8. The tenancy agreement in this application makes no mention of the grounds at all, even in a more abbreviated form. The Act has not therefore been complied with.
9. Rule 8(1)(c) of the Rules allows an application to be rejected by the Chamber President if **"they have good reason to believe that it would not be appropriate to accept the application"**.

L A Ward

10. I consider that this application has no reasonable prospect of success, standing the terms of section 18(6) and the judgments referred to. I therefore do not consider it is appropriate to accept the application.

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.

L A Ward

Lesley Anne Ward

Legal Member

