



Decision with Statement of Reasons of H 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/CV/21/2910

Re: 17 Helenslee Road, Dumbarton, G82 4AN ("the Property")

Parties:

Barton Carmelite Ltd. ("the Applicant")

Lisa Kroukamp ("the Respondent")

Tribunal Member:

Ms H 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 111 on 24th November 2021. The Applicant included a copy of a lodger's agreement, invoices, letter dated 2nd August 2021 to the Respondent, and electricity calculations.
2. The application was considered by the Tribunal and further information was requested by letter dated 22nd December 2021, as follows:
 1. The tenancy appears to be a lodger's agreement with resident owner. The Tribunal may only deal with private residential tenancies under Rule 111. A lodger's agreement with resident owner is excluded from the Tribunal's jurisdiction. Please provide your written submissions as to why you consider the Tribunal has jurisdiction to entertain such an application.

2. Please provide evidence of landlord registration.

The Applicant was given until 5th January 2022 to respond, failing which the application may be rejected.

3. By email dated 26th December 2021, the Applicant responded, enclosing notification from Dumbarton Sheriff Court stating that the Sheriff had ordered that the case be transferred from the simple procedure to the Tribunal Service, Housing and Property Chamber.
4. The application was considered by a legal member and a further request for information sent out on 19th January 2022, requiring a response by 2nd February 2022, requesting the following information, failing which the application may be rejected:

Please confirm whether or not the landlord is resident in the let Property. If so, please explain on what basis you consider the tribunal to have jurisdiction.

5. By email dated 27th January 2022, the Applicant responded:

In reply to your correspondence. I would like to state that I am the owner of the property at 17 Helenslee Road, G82 4AN.

I had a lodger, Ms Lisa Kroukamp living in part of the house on a lodgers agreement, as utilities for the property were all connected and so too were the rooms allocated to her. She was given notice to quit as I intended to live in that part of the house whilst the rest was being renovated. She stopped paying rent and at first refused to leave. I thought that it was a simple matter that should have been dealt with in the Dumbarton courts as a simple civil case involving non rental payments. I don't know why it was moved to tribunal courts.

6. The application was considered further on 14th February 2022.

Reasons for Decision

7. 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."

8. '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"*.
9. The Tribunal does not have jurisdiction to hear this case. The Tribunal has jurisdiction under 1) Rule 111 to consider civil proceedings in relation to private residential tenancies under the Private Housing (Tenancies) (Scotland) Act 2016; and 2) Rule 70 to consider civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988. This application does not fall within either rule.
10. 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

Legal Member/Chair

14th February 2022

Date