



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/EV/22/3621

Re: 2/2 8 Dodside Place, Sandyhills, Glasgow, G32 9EJ ("the Property")

Parties:

Phil McQuillian ("the Applicant")

Sarah-Jane Charters McMillan ("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. An application was received by the Tribunal under Rule 66 on 4th October 2022. The Applicant was seeking an order for possession in terms of section 33 of the Housing (Scotland) Act 1988. The Applicant's representative lodged copy Notice to Quit and Section 33 notice dated 12th July 2022 requiring vacant possession by 3rd October 2022 with evidence of service, section 11 notice with evidence of service, short assured tenancy agreement commencing on 27th May 2016 to 28th November 2016 and monthly thereafter, and photographic evidence.
2. The application was considered by the Tribunal and further information was requested by letter dated 1st November 2022, as follows:

The lease commenced 27 May 2016 and with an end date of 28 November 2016 and states that it will continue thereafter on a monthly

basis until ended by either party. The lease therefore appears to run on a monthly basis to the 28th of each month. The Notice to Quit has been served with a date of 3 October 2022. This does not tie in with the ish date of the tenancy agreement. Please explain the basis upon which you consider that the Notice to Quit is competent?

3. By email dated 15th November 2022, the Applicant responded as follows:

The tenant paid a pro rata on 27th May changing the date to 1st of June in agreement with the landlord.

There was a letter issued alongside this by an ex colleague Michael McDonald but this has been archived on our old system I have contacted them to retrieve this but as of yet there has been no response.

4. The application was considered further on 1st December 2022.

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.

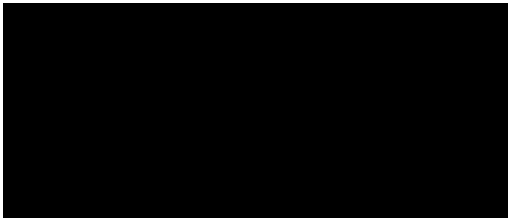
6. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in ***R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env. L.R. 9***. At page 16, he states: - *“What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic”.*
7. The Notice to Quit is invalid in respect that it specifies a date to leave the premises of 3rd October 2022. That termination date is not an ish of the tenancy agreement, as required in order to constitute an effective notice. The short assured tenancy agreement provides at Clause 5 that the tenancy started on

27th May 2016 and that the initial period of the tenancy is until 28th November 2016. That clause goes on to state that 'If the agreement is not brought to an end by either party on the end date, it will continue thereafter on a monthly basis until ended by either party.' Accordingly, as the agreement was not brought to an end on 28th November 2016, the agreement continued on a monthly basis. That being so, the ish date of the tenancy falls on the 28th day of each month, and the Notice to Quit and vacate the premises by 3rd October 2022 (which is not an ish date) is ineffectual. See *Stalker – Evictions in Scotland* (2nd Ed.) pages 58-60, and section 38 of the Sheriff Courts (Scotland) Act 1907). Upon that basis, the Notice to Quit is invalid, the contractual tenancy remains in place, and an order for possession cannot be granted in terms of section 33 of the Housing (Scotland) Act 1988.

8. 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. It would not be appropriate to accept the application. 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.



Legal Member/Chair

1st December 2022
Date