



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/22/1209

Re: 23 Howden Place, Holytown, ML1 4RH ("the Property")

Parties:

William Craig ("the Applicant")

Sarah Ann Gallacher; William Youngson ("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. Two applications were received by the Tribunal under Rule 65 on 26th April 2022, with associated documents.
2. By email dated 28th April 2022, the Applicant's representative stated the following:

Please find attached Mr Youngson's Application. You have two Miss Gallacher applications and I have Two Youngsons !!

Please note that I inherited this tenancy where there was never a tenancy agreement in place between the landlord and tenant. They were friends at one time.

3. By email dated 3rd May 2022, the Applicant's representative stated:

The amended application FTS/HPC/EV/22/1209. Should be allocated to Mr Youngson And FTS/HPC/EV/22/1206 is Miss Gallachers application

4. The application was considered by a legal member and the following information requested by letter dated 25th May 2022, requesting a response by 8th June 2022:
 1. You have submitted 2 separate applications but these appear to relate to the same property and the same Applicant. If the Respondents are joint tenants please confirm that you wish to withdraw one of the applications and amend the other to include the joint tenant.
 2. You have indicated that you cannot provide the tenancy agreement. Please note that a copy of the tenancy is required. However, if you cannot provide it you must provide evidence of the existence of a tenancy and as much detail about the tenancy as you can. This must include the start date and the agreed rent. If you have information and evidence about the agreed initial term this must also be provided.
 3. The Notice to Quit appears to be invalid as it only gives 2 weeks notice. In terms of Section 112 of the Rent (Scotland) Act 1984 a notice to quit must give at least 4 weeks notice. Furthermore, in the absence of a written tenancy agreement, please explain why the date specified in the notice can be established as an ish date. Please clarify the basis upon which the application can proceed or confirm if you wish to withdraw the application and re-submit it once a valid notice to quit has been served.
 4. The AT6 notice appears to be invalid as it does not give 2 clear weeks notice. If it was delivered on 5 April, the date in the notice ought to be 21 April. Again, please explain the basis upon which the Tribunal can consider the application or advise if you wish to withdraw it.
 5. If the application is to proceed please provide (a) A rent statement for the whole period of the arrears which shows the rent due, the rent paid and the running total outstanding. (b) Evidence of service of the notices. If these were hand delivered please confirm when they were delivered, who delivered them and whether they were posted through the letterbox or handed to one of the Respondents. (c) Evidence of compliance with the Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020, if applicable. You may wish to take legal advice before you respond.
5. By email dated 27th June 2022, a further request was made to the Applicant's representative to provide the requested information by 4th July 2022.
6. By email dated 4th July 2022, the Applicant's representative responded as follows:

I withdrew one of the applications and sent it to Laura McIlrath on 28/04/22. I have attached Mr Youngson's again.

Please note that I inherited this tenancy where there was never a tenancy agreement in place between the landlord and tenant.

They were friends at one time, the landlord Mr Craig asked me to start managing the property when the tenant began to miss rent payments.

I have attached the most recent rent sheet showing the arrears and screen shots of text conversations discussing his rental payments.

I hand delivered the AT6 to Mr Youngson on 5th April at the property witnessed by my secretary Mrs Wardlaw.

Is the 5th to 19th is 14 clear days?

I used the 19th as the ish date because the 19/10/16 was the very first time that they paid rent direct to Prospect Properties

7. By emails dated 11th and 12th July 2022, the Applicant representative stated that he wished to withdraw one of the applications and amend the other to include both tenants.

8. By email dated 14th July 2022, the Applicant representative stated:

Please withdraw the application reference FTS/HPC/EV/22/1206 for Sarah Ann Gallacher and would like to add her to application reference FTS/HPC/EV/22/1209 with Mr Youngson.

9. By letter dated 4th August 2022, requiring a response by 18th August 2022, the following information was requested from the Applicant's representative:

We refer to the above application and confirm we have, as requested, added Ms Sarah Ann Gallacher as a second respondent. However some of the information previously requested from you for this application has not yet been provided:

1. We previously advised that the Notice to Quit appears to be invalid as it only gives 2 weeks notice. In terms of Section 112 of the Rent (Scotland) Act 1984 a notice to quit must give at least 4 weeks notice. You have explained that you took the ish date to be the date rent was first paid and this would be matter of proof at a hearing if the case was to be accepted but you have not provided any legal submission or reason as to why we could or should accept the notice to quit if it does not give the minimum notice period. An action for eviction where there is not written tenancy agreement requires a valid notice to quit and in the absence of one this application cannot proceed. Please let us have your

submissions as to why you believe this Notice to Quit is valid or confirm if you wish to withdraw the application and re-submit it once a valid notice to quit has been served. We would recommend you take your own legal advice on this as matters concerning notices to quit and eviction actions can be complex.

2. As the case is now proceeding as well against Ms Sarah Ann Gallacher the same questions arise regarding her notice to quit and the validity of it?

3. If the case proceeds evidence regarding delivery of the documents and the notice period will require to be provided to and discussed at the Tribunal.

4. The Rent statement you have provided only shows rent arrears from May 2021 at which point there is an outstanding balance can you please supply evidence of when the arrears began or advise when you took over the tenancy, what rent was due from then, what date it was due on and what was paid from that date that you took over?

No response was received.

10. By email dated 20th September 2022, the Applicant's representative was asked to respond to the letter of 4th August 2022 within 7 days, failing which the application may be rejected. No response was received.

11. The application was considered by a legal member on 25th October 2022.

Reasons for Decision

12. 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."

13. '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*".
14. The application cannot proceed as the Notice to Quit appears to be invalid as it only gives 14 days notice. In terms of Section 112 of the Rent (Scotland) Act 1984, a notice to quit must give at least 4 weeks notice.
15. 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. 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

25th October 2022
Date