



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/22/3064

Re: Flat 4, 24 Montrose Street, Clydebank, G81 2PZ ("the Property")

Parties:

Reynolds Property Rentals Ltd. ("the Applicant")

Nichola Mcquillan ("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 109 on 26th August 2022, with associated documents.
2. The application was considered by the Tribunal and further information was requested by email dated 27th September 2022, as follows:

1. It appears that, at the time of serving the Notice to Leave, there may have been less than 3 full months' rent arrears. Your attention is drawn to the Upper Tribunal case of *Majid v Gaffney* [2019] UT 59 UTS/AP/19/0037. In the event that you accept that at the time of service of the Notice there was less than three full months' rent outstanding, you should consider withdrawing the application, re-serving the Notice to Leave, and applying again when the correct notice period has passed.

2. You have not provided evidence of service of the Notice to Leave, such as a recorded delivery receipt and tracking information or an email. It is noted that the tenancy agreement only provides for email service of notices. In the event that the application can proceed, taking point 1 above into account, please provide evidence of service of the Notice to Leave.

3. By email dated 28th September 2022, the Applicant responded as follows:

1. *The tenant is due to pay their rent on the 24th of each calendar month. The Last payment from the tenant was Aprils rent which was paid two days late on the 26th of April. I therefore gave the tenant the benefit of the two extra days and issued the notice to leave on the 26th July 2022 at which point three months rent payments were in arrears.*
2. *I attach a copy of the post office receipt for the recoded delivery of the notice to leave, in addition the tenant emailed me to say she had received it and that the council homeless unit had told her not to leave. As an additional note the tenant is purposefully withholding rent as she want to be evicted in order for the council to house her in a different area away from a previous partner she wishes to avoid.*

4. The application was considered by a legal member on 25th October 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 Leave in this case specifies a ground for eviction which was not satisfied as at the date of service, as the Respondent was not, at that time, in three months' arrears of rent. In order for the ground to apply, the tenant must have been in arrears for the specified period of time, not simply owing rent. That being the case, the Notice to Leave is invalid and the case must be dismissed.
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. 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.

H. Forbes

Legal Member/Chair

25th October 2022
Date