



Decision with Statement of Reasons of Helen 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/21/2714

Re: 75 Oak Drive, Lenzie, G66 4DG ("the Property")

Parties:

Ann Currie ("the Applicant")

Pamela Marshall, Serena Marshall ("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 65 on 3rd November 2021. The following documents were enclosed with the application:
 - (i) Short Assured Tenancy Agreement commencing on 1st February 2014
 - (ii) Form AT5
 - (iii) Notice to Leave dated 20th May 2021
 - (iv) Section 33 Notice dated 20th May 2021
 - (v) Home Report
 - (vi) Section 11 Notice
2. The application was considered by the Tribunal and further information was requested by letter dated 19th November 2021, as follows:

1. You have submitted the application under Rule 65 but have lodged a section 33 notice and not an AT6. If the application is to proceed in terms of Section 33, this should be Rule 66. If it is to proceed under Rule 65, it requires to be based on one of the grounds for possession stated in Schedule 5 of the Housing (Scotland) Act 1988. The ground you have referred to is eviction ground 1 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016. This Act only applies to tenancies which started after 1 December 2017. This ground is therefore not applicable. Landlord intends to sell is not a ground for possession under the 1988 Act. Please clarify the position regarding the correct Rule and ground.

2. You have submitted a Notice to leave. This notice only relates to tenancies under the 2016 Act. If the application is to proceed under Rule 66, a valid Notice to Quit must be served. Thus may not be required for Rule 65, depending on the ground being relied upon. An AT6 is also required, although this can be dispensed with by the Tribunal in some circumstances.

3. If the application is to proceed under R66, it appears that it is premature as the date specified in the Section 33 has not yet passed. You will require to withdraw the application and re-submit it after the relevant date. However, a valid Notice to quit should also be served before the application is re-submitted.

4. If the application is to proceed you will require to provide evidence of service of the relevant notices on the Respondent and the section 11 notice to the local authority.

The Applicant was given until 3rd December 2021 to respond, failing which the application may be rejected. No response was received.

3. The application was considered by a legal member and a further request for information sent out on 22nd December 2021, requiring a response within 7 days. No response was received.

4. The application was considered further on 24th January 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 application cannot proceed without clarification on the type of application being made, and the requested information on the service of notices, including a notice to quit.
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. 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

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Legal Member/Chair

24th January 2022
Date