



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/21/2107

Re: Northmost First Floor Flat, 6 Baxter Park Terrance, Dundee, DD4 6NL ("the Property")

Parties:

Francis Herring and William David Herring ("the Applicant")

Lisa Airlie ("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 made under Rule 66 and was dated 30th August 2021. The ground under which the eviction order was sought was Ground 5. The following documents were provided:
 - (i) Tenancy agreement between the parties
 - (ii) Section 33 Notice
 - (iii) Notice to Quit
 - (iv) Section 11 Notice

2. The Tribunal considered the application and wrote to the Applicant's representative requesting the following information on 14th September 2021:

1) The Tribunal notes that title to the property is held in the name of William David Herring and Frances Georgina Herring, and that both are named as landlord in the tenancy agreement. Please confirm if Mrs Herring is content for the application to be brought by the Applicant on her behalf, or if she wishes to be added as an additional applicant.

2) Copy section 11 notice to the local authority.

3) Copy evidence of intimation of the section 11 notice on the local authority.

4) A copy of the form AT5. Although, as you note, the lease agreement agrees that a form AT5 was given to the tenant, without some evidence it cannot be proved if that form AT5 was valid.

5) Confirmation of the basis upon which the notice to quit specifies that 18th August 2021 is an ish date of the lease. The lease agreement provided appears to indicate that the lease had an ish date of 7th August 2010, and thereafter continued on a month to month basis. In that event, the ish date would fall on the 7th day of each month

3. By email dated 28th September 2021, the Applicant's representative replied as follows, enclosing the relevant documentation:

1. A Section 2 Continuation of Applicant Details is attached confirming that Mrs Herring is to be an additional applicant;

2. Copy Section 11 Notice with proof of delivery is attached.

3. Please see above;

4. The AT5 document has been recovered direct from the tenant and is attached;

5. The Lease for this property ran from 18 February to 18 August. This is the correct Lease and the correct ish date. A copy of the relevant Lease is attached.

4. By letter dated 25th October 2021, the Applicant's representative was asked to provide a response to the following:

1. The new copy lease submitted appears to be identical to the previous document, except for the dates. The signature page on the new document is also identical. Please clarify why there are two similar documents, both signed on the same dates, but with different term dates.

2. The lease appears to have been signed and dated by the Tenant on 28 January 2010. The AT5 is signed and dated by the tenant on 8 February 2010. As this is after the date on which the tenancy was

created, please clarify the basis upon which it could be concluded that the tenancy is a short assured tenancy.

5. No response was received from the Applicant's representative. A further letter was sent reiterating the request for information on 1st December 2021.
6. The Applicant's representative has provided no further information.
7. The application was considered again by a Legal Member on 12th January 2022.

Reasons for Decision

8. 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-

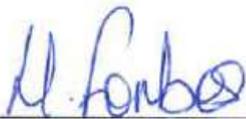
(a) they consider that the application is frivolous or vexatious;·
(c) they have good reason to believe that it would not be appropriate to accept the application;

(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."

9. '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".
10. The application cannot proceed without clarification in regard to the correct tenancy agreement, the term dates of the tenancy, and the date of service of the Form AT5.
11. In light of the above reasons the Tribunal cannot grant the order sought. 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.



M. Forbes

12th January 2022

Legal Member/Chair

Date