



DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under delegated powers of the Chamber President)

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/19/1456

Re: Property at 38 Westmuir Street, Flat 2/2, Glasgow, G31 5BH (“the Property”)

Parties:

Alan Sneddon (“the Applicant”)
Kirsty Graham (“the Respondent”)

Joel Conn (Legal Member)

BACKGROUND

1. On 14 May 2019 an application was drafted by the Applicant under Rule 65 of the Rules, being an application for an order for possession in relation to an assured tenancy under which the Applicant leased to the Respondent the Property from 14 September 2014 until 14 September 2015 which would “continue thereafter on a monthly basis” (“the Tenancy”). The Tenancy set a rent of £380 per month to be paid in advance on the 14th day of each month.
2. At section of the application, the Applicant stated the following (original all in capitals) as the grounds for eviction:

Ground 8 Tenant is at least 3 months rent arrears. Tenant has accumulated rent arrears over the last 3 years and is currently 18 months behind in her rent.

The Applicant then proceeded to provide some information on lack of communication and the Respondent informing Glasgow City Council to place the Council Tax back into the Applicant’s name from 27 March 2019. He comments that the Respondent may have left the Property.

3. The lease makes almost no reference to the grounds for recovery under Schedule 5 of the 1988 Act. The only explicit reference is at clause 34.4 where it states:

This Short Assured Tenancy may be ended by:- ...

By the Landlord giving the Tenant the required Notice in the prescribed format in terms of Section 19 of the Housing (Scotland) Act 1988 of their intention to commence proceedings and then subsequently obtaining an order for recovery of possession from the Sheriff Court on one or more of the grounds set out in schedule 5 of the Housing (Scotland) Act 1988.

4. As stated, the application relied on eviction on Ground 8 and 10 of Schedule 5 to the 1988 Act. This is:

Ground 8: Both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing, at least three months rent lawfully due from the tenant is in arrears.

5. The application did not refer to the specific amount of the arrears or provide a rent statement though the reference to 18 months of arrears would mean arrears of £6,840.
6. The application was accompanied by an AT6 (notice under section 19 of the 1988 Act) dated 24 April 2019 and stating that proceedings would not be raised before 12 May 2019. No evidence of the date of service of the AT6 was provided. The AT6 further lacked reference to a specific amount of arrears but did refer to reliance on Ground 8 and gave the following reason at Part 3:

You have been in rent arrears for more than 3 years and have not kept to any payment plan agreed to bring down arrears. You now owe more than 18 months in rent arrears.

7. The application was accompanied by a Section 11 Notice to the local authority but the notice did not correctly specify that eviction was sought under section 19A of the 1988 Act.
8. Another Legal Member considered the application previously and instructed the Tribunal to correspond with the Applicant to request a copy of a Notice to Quit, evidence of service of the Notice to Quit and the AT6, and to query the apparent error in the Section 11 Notice. The Tribunal sent a letter to this effect on 23 May 2019 giving the Applicant until 6 June 2019 to respond. No further correspondence or documentation has been received from the Applicant.
9. The application was considered by the current Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8.

DECISION

10. The Legal Member considered that the application in terms of Rules 5 and 8 of the Rules. These Rules provide:

5.—(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55,

59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) *The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.*

(3) *If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.*

(4) *The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.*

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;*
- (b) *the dispute to which the application relates has been resolved;*
- (c) *they have good reason to believe that it would not be appropriate to accept the application;*
- (d) *they consider that the application is being made for a purpose other than a purpose specified in the application; or*
- (e) *the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.*

(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.*

11. Rule 65 (as amended), governing the application, provides:

Where a landlord makes an application under section 18(1) (orders for possession) of the 1988 Act, the application must—

- (a) *state—*
 - (i) *the name, address and registration number (if any) of the landlord;*

- (ii) *the name, address and profession of any representative of the landlord;*
 - (iii) *the name and address of the tenant; and*
 - (iv) *the possession grounds which apply as set out in Schedule 5 of the 1988 Act;*
- (b) *be accompanied by—*
- (i) *a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;*
 - (ii) *a copy of the notice served on the tenant by the landlord of intention to raise proceedings for possession of a house let on an assured tenancy;*
 - (iii) *a copy of the notice to quit served by the landlord on the tenant (if applicable); and*
 - (iv) *evidence as the applicant has that the possession ground or grounds has been met;*
 - (v) *a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003 (if applicable); and*
 - (vi) *a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1980 (if applicable); and*
- (c) *be signed and dated by the landlord or a representative of the landlord.*
12. Further, the Rules in general are to be considered in line with Rule 2: the “overriding objective”:
- (1) *The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.*
 - (2) *Dealing with the proceedings justly includes—*
 - (a) *dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;*
 - (b) *seeking informality and flexibility in proceedings; ...*
 - (e) *avoiding delay, so far as compatible with the proper consideration of the issues.*
13. Section 18(6) of the 1988 Act (as amended) states:
- The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—*

(a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

14. After consideration of the application and supporting papers, I considered that the application should be rejected on the basis that it is incomplete and thus this is a good reason to refuse the application under Rule 8(1)(c) of the Rules, and further – on the assumption that no Notice to Quit was prepared – it would be frivolous within the meaning of Rule 8(1)(a) of the Rules.

REASONS FOR THE DECISION

15. The Applicant has been given a reasonable period to respond to queries from the Tribunal, in particular in regard to two matters fundamental to the acceptance of an application under Rule 65: a Notice to Quit under Rule 65(b)(iii) (if relevant as it would be here; see below), and a Section 11 Notice in correct form under Rule 65(b)(v).
16. The Applicant has not responded or asked for further time. The application thus appears incomplete and, in consideration of the over-riding objective in Rule 2, it would not be appropriate to delay matters further. The application appears incomplete and this is a good reason under Rule 8(1)(c) to refuse the application at this time rather than continue for a renewed documentation request.
17. In regard to refusal in terms of Rule 8(1)(a), “frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, [1997] EWCA Civ 1575. 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”. It is this definition that I have considered as the test in this application in holding that the application is frivolous in that it has no prospect of success for the reasons following.
18. In consideration of all the papers, the terms of the Tenancy are such that the ish would have been 14th September 2015 and the 14th of each month thereafter. No Notice to Quit has been provided should termination of the tenancy. This has an implication for any attempt to recovery under Ground 8, as in the absence of a valid Notice to Quit, any application under Rule 65 would require consideration as to whether the lease complied with section 18(6) of the 1988 Act. In terms of section 18(6) of the 1988 Act, in order to seek possession under Ground 8 as sought by the Applicant, either the Tenancy requires to be a “a statutory assured tenancy” (that is, the ish having expired and no tacit relocation operating, all under section 16 of the 1988 Act) or the Tenancy

Agreement requires to state in detail at least Ground 8. The Tenancy bears no clause which covers the contents of Ground 8 of Schedule 5 of the 1988 Act, the terms of which are quite specific.

19. In all the papers are provided, I do not consider there to be any prospect of success of this application due to the lack of a Notice to Quit and an application based on the documentation provided is rejected on the basis that the application is frivolous.

RIGHT OF APPEAL

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:-

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.

J Conn

Legal Member/Chair

20 June 2019

Date