



Decision with Statement of Reasons of Alan Strain, 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/20/1267

Re: 91 Baldwin Avenue, Glasgow, G13 2QT ("the Property")

Parties

Mr John Deans (Applicant)
Ms Kristina Griffiths (Respondent)

Tribunal Member:

Alan Strain (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 15 June 2020. The grounds for possession/eviction were stated to be Ground 12. The following documents were enclosed with the application:

- (i) Private Residential Tenancy Agreement (**PRTA**) commencing 27 May 2019;
- (ii) Notice to Leave dated 3 April 2020 and Royal Mail Proof of Delivery;
- (iii) Section 11 Notice.

2. The application was considered by the Tribunal and further information was requested by letter of 22 June 2020. The Applicant was asked to:

"Before a decision can be made, we need you to provide us with the following:

1. *Please provide a copy of the tenancy agreement.*

2. *You have provided evidence of delivery of the Notice to leave. Please confirm the date of sending the notice, with evidence if available.*
3. *Please provide a rent statement showing rent due each month, any payments received and the balance outstanding.*
4. *Please confirm how and when the Section 11 Notice was given to the local authority, together with evidence, if available.*

*Please reply to this office with the necessary information by **6 July 2020**. If we do not hear from you within this time, the President may decide to reject the application.”*

3. No response was received. The Tribunal wrote to the Applicant again on 6 August 2020 requesting further information as follows:

“Before a decision can be made, we need you to provide us with the following:

Your application has been referred to a legal member. The legal member has requested that you provide the further information requested in our letter of 22 June 2020.

Please reply to this office with the necessary information by 20 August 2020. If we do not hear from you within this time, the President may decide to reject the application.”

4. No response was received.

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 Applicant had not produced the information requested by the Tribunal on 22 June and 6 August 2020. Section 11 of the **Homelessness etc. (Scotland) Act 2003** provides:

Notice to local authorities of proceedings for possession and enforcement of standard securities

(1)Where a landlord raises proceedings for possession of a dwellinghouse, the landlord must give notice of the raising of the proceedings to the local authority in whose area the dwellinghouse is situated, unless the landlord—

(a)is the local authority, or

(b)is required to give such notice to the local authority under any other enactment.

The Applicant had not produced confirmation of the service of the section 11 Notice upon the Local Authority. The application could not proceed without that.

Furthermore, the Applicant had not produced evidence in the form of a rent statement to support the ground of eviction (Ground 12). The Tribunal could not grant the order sought without such evidence.

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.

A. Strain

4 September 2020

Legal Member/Chair

Date