



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/20/1308

Re: 39 Union Street, Brechin, Angus, DD9 6HG ("the Property")

Parties

**John Crawford (Dundee) Ltd (Applicant)
Miss Fiona Roberts (Respondent)**

Wardhaugh Property (Applicant's Representative)

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 Grounds 11 and 12. The following documents were enclosed with the application:
 - (i) Private Residential Tenancy Agreement (**PRTA**) commencing 23 November 2018;
 - (ii) Section 11 Notice;
 - (iii) Rent Statement.
2. The application was considered by the Tribunal and further information was requested by letter of 25 June 2020. The Applicant's Representatives were asked to:

- (a) Please provide a copy of the Notice to leave given to the Respondent, as required by Section 52(3) Private Housing Tenancies (Scotland) Act 2016. Please also confirm how and when this was given to the respondent, and provide evidence of same.
- (b) Please provide a copy of the Notice sent to the Local Authority in terms of Section 11 Homelessness etc (Scotland) Act 2003 and evidence that it was sent.
- (c) Please provide a rent statement for the whole of the relevant period, up to the date of the application.
- (d) Please provide evidence to support ground 11, breach of tenancy, as required by Rule 109.

The Applicant's Representatives were given until 9 July 2020 to respond failing which the application may be rejected.

3. The Applicant's Representatives responded by email of 15 July 2020 enclosing the section 11 Notice and up to date rent statement. The email confirmed they had been unable to trace the Notice to Leave.

4. The Tribunal considered the Applicant's Representatives response on 28 July 2020 and wrote requesting further information as follows:

- (a) Please provide a copy of the Notice to Leave given to the Respondent, as required by Section 52(3) Private Housing Tenancies (Scotland) Act 2016. Please also confirm how and when this was given to the respondent, and provide evidence of same.

The Applicant's Representatives were given until 11 August 2020 to respond failing which the application may be rejected.

5. No response was received.

Reasons for Decision

6. 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."

7. '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”.*

8. A Notice to leave was not produced nor was proof of service. Section 52 of the Act provides:

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

As the Applicant could not provide a copy of the Notice to Leave the Tribunal could not entertain the application.

9. 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.

Alan Strain

31 August 2020

Legal Member/Chair

Date