



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/20/1668

Re: The Old Stable, Old Bennan Smiddy, Shannochie, Isle of Arran, KA27 8SJ ("the Property")

Parties

**Ms Sandra otherwise Sandy Rawlings otherwise Beckitt (Applicant)
Mr Ian Hawkes (Respondent)**

Stewart & Osborne Legal LLP (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 rejected 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 66 dated 7 August 2020. The grounds for possession/eviction were stated to be termination of a Short Assured Tenancy (**SAT**) under section 33 of the **Housing (Scotland) Act 1988 (Act)**. The following documents were enclosed with the application:

- (i) SAT commencing 5 June 2010 to 5 December 2010;
- (ii) Notice to Quit dated 26 March 2020 which specified 4 June 2020 as the date to quit;
- (iii) Certificate of receipt of AT5 dated 5 June 2020;
- (iv) Section 33 Notice which specified 5 June 2020 as the date of termination of the SAT;

- (v) Certificate of Delivery of Section 33 Notice and Notice to Quit dated 27 March 2020;
- (vi) Section 11 Notice.

2. The application was considered by the Tribunal and further information was requested by letter of 1 September 2020 as follows:

1. *You have submitted a certificate/receipt in relation to the AT5 but not the Notice itself. Please provide a copy of the AT5.*
2. *The tenancy agreement is unsigned. Please provide evidence that this is the agreement which currently exists between the parties. In particular, please provide evidence that the term stipulated is the agreed term.*
3. *If the agreement you have lodged is the current agreement, it appears that the Notice to Quit is invalid as the date specified does not coincide with an ish. Please clarify the basis upon which the Tribunal can proceed to consider the application.*
4. *Please provide a copy of the Section 33 Notice and evidence as to how and when it was served on the Respondent.*
5. *Please confirm how and when the Section 11 Notice was sent to the Local Authority."*

The Applicant was given until 15 September 2020 to provide the information and informed that if it was not provided the President may decide to reject the application.

3. The Applicant responded on 14 September 2020 informing the Tribunal that no copy of the AT5 could be found and explaining that 4 June 2020 was considered to be a valid "ish".

Reasons for Decision

4. 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."

5. '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*".

6. The application seeks to proceed under Rule 66 and section 33 of the Act. In order to do so the tenancy must have been a Short Assured Tenancy (**SAT**), validly terminated and tacit relocation not be operating. SAT's are tenancies created under section 32 of the **Housing (Scotland) Act 1988 (Act)** which provides:

32 Short assured tenancies.

(1) A short assured tenancy is an assured tenancy—

(a) which is for a term of not less than six months; and

(b) in respect of which a notice is served as mentioned in subsection (2) below.

(2) The notice referred to in subsection (1)(b) above is one which—

(a) is in such form as may be prescribed;

(b) is served before the creation of the assured tenancy;

(c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and

(d) states that the assured tenancy to which it relates is to be a short assured tenancy.

The Applicant has been unable to provide a copy of the AT5 served prior to commencement of the tenancy. An AT5 is the prescribed notice referred to in section 32(2) (a) of the Act. The tenancy cannot be an SAT under the Act unless an AT5 has been served. Furthermore, the Notice to Quit purports to terminate the tenancy as at 4 June. The ish date was 5 June. The tenancy has not been validly terminated and continues.

7. 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.

Alan Strain

8 October 2020

Legal Member/Chair

Date