

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/4032

Re: 18 Union Street, Kelty, KY4 OEE ("the Property")

Parties:

James McFadyen ("the Applicant")

Keiron Stewart and Rhiannon Lowe ("the 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 19 December 2019. The grounds for possession/eviction were stated to be Ground 12 (Rent Arrears) and Ground 1 (Landlord intends to sell the Property). The following documents were enclosed with the application:
 - (i) Private Residential Tenancy Agreement (**PRTA**) commencing 14 July 2019;
 - (ii) Letter purporting to be a section 33 Notice under the Housing (Scotland) Act 1988 ("**the 1988 Act**");

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- (iii) 5 pages supplementing Section 5 of Form E which make reference to Ground 8 of the 1988 Act, Rule 65 (Termination of a Short Assured Tenancy under the 1988 Act) and intention to sell.

2. The application was considered by the Tribunal and further information was requested by letter 20 December 2019. The Applicant was asked:

- (a) Provide a Notice to Leave duly served on the tenant;
- (b) Provide a copy of the section 11 Notice to the local authority;
- (c) To provide proof of service of the section 11 Notice on the local authority
- (d) Provide a copy of Form BB (Notice to Occupier) (If applicable).

The Applicant was given until 27 December 2019 to respond failing which the application may be rejected.

3. The Applicant responded by letter of 14 January 2020 enclosing section 11 Notice and a document which he described as copy Notice to Leave. The document referred to as notice to leave was headed up section 33 Notice and contained references to the 1988 Act. It did not constitute a Notice to Leave under the 2016 Act.

4. The Tribunal wrote to the Applicant again on 17 January 2020 and gave him a final opportunity to respond by and to provide the information requested in the letter of 20 December 2019.

5. The application was considered again by a Legal Member on 28 January 2020.

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*".

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8. The application seeks to proceed under Rule 109 and section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“**the 2016 Act**”). The tenancy that has been created is a PRTA under the 2016 Act. A PRTA may be terminated by service of a Notice to Leave in the prescribed format. No Notice to Leave has been produced despite 2 requests from the Tribunal.

The Applicant has produced documentation in support of his application which refers to the 1988 Act, Ground 8, Rule 65 and Short Assured Tenancies. The Applicant has clearly confused the application of the law as it related to tenancies created prior to 1 December 2017 which are regulated by the 1988 Act and the law relating to tenancies created after 1 December 2017 which are regulated by the 2016 Act.

As the Applicant has been unable to produce a valid Notice to Leave the PRTA has not been terminated and 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.

A. Strain

28 January 2020

Legal Member/Chair

Date