

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ANDREW UPTON, LEGAL MEMBER OF
THE FIRST-TIER TRIBUNAL WITH 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")

in connection with

50 Osprey Crescent, Paisley, PA3 2QQ

Case Reference: FTS/HPC/EV/17/0522

THE PROPERTY STORE (GB) LIMITED ("the Applicant")

LISA MARIE LOCHRIE ("the Respondent")

1 On 15 December 2017, an application was received from the applicant via its solicitor. The application was made under Rule 65 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under an Assured Tenancy. The following documents were enclosed with the application:-

- (i) Copy Form AT6;
- (ii) Copy Notice to Quit; and
- (iii) Copy Certificate of Service of Notice to Quit and Form AT6.

2 A request for further information was issued to the solicitor instructed by the Applicant on 21 December 2017. By email of even date, the solicitor for the Applicant supplied the following additional documents:-

- (i) Copy Short Assured Tenancy Agreement;
- (ii) Copy Form AT5; and
- (iii) Copy Rent Account Statement.

- 3 In terms of the tenancy agreement, the landlord is noted as Tariq Mohammed. The Respondent is noted as the tenant. The Applicant appears from the papers provided to be the letting agent of Tariq Mohammed, who is the true landlord.
- 4 The Tenancy Agreement commenced on 15 November 2014 and was for a period of six months, continuing on a month-to-month rolling basis thereafter.
- 5 The Notice to Quit provided that the Tenancy Agreement would terminate on 6 December 2017.

DECISION

- 6 I 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;

(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."

- 7 After consideration of the application, the attachments and correspondence from the Applicant's solicitor, I consider 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.

REASONS FOR DECISION

8 '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"*. It is that definition which I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived, and has no prospect of success.

9 Section 19 of the 1988 Act provides as follows:-

"19.— Notice of proceedings for possession.

(1) The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—

(a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or

(b) the Tribunal considers it reasonable to dispense with the requirement of such a notice.

(2) The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.

(3) A notice under this section is one in the prescribed form informing the tenant that—

(a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and

(b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.

(4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—

(a) two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and

(b) in any other case, two weeks.

(5) The First-tier Tribunal may not exercise the power conferred by subsection (1)(b) above if the landlord seeks to recover possession on Ground 8 in Schedule 5 to this Act.

(6) Where a notice under this section relating to a contractual tenancy—

(a) is served during the tenancy; or

(b) is served after the tenancy has been terminated but relates (in whole or in part) to events occurring during the tenancy,

the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.

(7) A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised."

Title to Sue

10 The first issue identified in this action is whether the Applicant has title to sue. The application is submitted not by the party named in the Tenancy Agreement as the landlord, but by a party noted in the AT5 accompanying that Tenancy Agreement and the Notice to Quit as the agent of the landlord.

11 The Applicant appears to proceed on the basis that, as agent of the Landlord, it has title to sue in this application. In the Stair Memorial Encyclopedia, Civil Procedure (Reissue), at paragraph 78, the title of agents to sue is summarised as follows:-

"Where an agent transacts as such for a disclosed principal, it is the principal who should sue and be sued. Generally the agent will have neither liability nor title to sue. Exceptions will occur if, despite his status as agent, the agent himself undertakes to perform the obligation in question or if he acts outwith his authority. An agent of an undisclosed principal may sue or be sued in his own name. The principal may disclose himself and then he can sue or be sued in his own name. In the event of disclosure, a person seeking to sue will require to elect whether to sue the agent or principal since liability is alternative and not join. Similar considerations apply where an agent contracts ostensibly as principal."

12 In Gloag and Henderson, *The Law of Scotland*, 14th Ed., at paragraph 18.27, it says that, *"Where the agent names his principal, the general rule is that the principal alone is the contracting party, and that the agent is under no liability and has no title to sue on the contract."*

ADJ

- 13 It seems to me that whilst it may be the case in circumstances where the agent is acting on behalf of an undisclosed principal, or in a situation where the agent has undertaken to perform the obligation of the principal, that an agent may sue in his own name, that is not the situation here. The Applicant is agent for a disclosed principal, namely Tariq Mohammed. The contract is plainly between Tariq Mohammed as landlord and the Respondent as tenant. I see no reason to depart from the general rule with regards to agents acting on behalf of disclosed principals. As such, it is my view that the Applicant has no title to sue. Accordingly, the application falls to be rejected on the basis that it is frivolous.

Observations

- 14 It appears to me that the Form AT6 which was served on the tenant was invalid. Firstly, at Part 2, the Landlord is stated erroneously as being "The Property Store (GB) LIMITED". For that reason alone, the AT6 is invalid. As discussed above, the landlord is Tariq Mohammed, and not the Applicant. Secondly, Part 2 also goes on to narrate the Grounds under which possession is to be sought, but does not specify the particulars of those grounds as required by section 19(2) of the 1988 Act. For that further reason, the Form AT6 is invalid.
- 15 It also appears to me that the Notice to Quit is invalid. The function of a Notice to Quit is to stop tacit relocation. A properly served Notice to Quit cannot terminate a tenancy other than at the natural expiry of the tenancy agreement. It is not, for example, a form of irritancy whereby a party can insert any termination date. To be valid, it must specify that the tenancy agreement to which it relates shall terminate at a properly calculated ish date. In this case, the ish date for the Tenancy Agreement occurs monthly on the 15th of the month. 6 December 2017 was not an ish date.

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: –

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, 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. Information about the appeal procedure can be forwarded to you on request.

Mr Andrew Upton
Legal Member
8 January 2018