



Decision with Statement of Reasons of Shirley Evans, 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/22/2343

Re: 7 Allison Place, Carstairs Junction, Lanark, ML11 8RQ ("the Property")

Parties

David MacPherson, 5 Castlegate, Lanark, ML11 9DZ(Applicant)

**John Bolton, 7 Allison Place, Carstairs Junction, Lanark, ML11 8RQ
(Respondent)**

Tribunal Member:

Shirley Evans (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 13 July 2022. The grounds for possession/eviction were stated to be Ground 1 (Sale of the Property) and Ground 3 (Refurbishment) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). A Notice to Leave dated 12 July 2022 (in so far as relevant) and a track and trace receipt dated 13 July 2022 were enclosed with the application:

2. The application was considered by the Tribunal. The Tribunal requested further information from the Applicant on 15 August 2022 with regard to the validity of the Notice to Leave and the application with specific reference to various sections of the 2016 Act and requested the Applicant provide a copy of the tenancy agreement and his Landlord Registration number.

3. The Applicant advised by email of 16 August 2022 that he was not a Landlord, that he had no Landlord Registration number and that the Respondent was a family member.

4. The Tribunal wrote to the Applicant again on 14 September 2022 pointing out to the Applicant that he had not responded to the points raised with regards to the validity of the Notice to Leave and the application and that they had received no evidence in support of Grounds 1 and 3. The Tribunal requested that the Applicant revert back to them on these matters.

5. By email of 22 September 2022 the Applicant advised that he was unable to supply evidence in support of Grounds 1 and 3. He also advised there was no tenancy agreement and no rent passing between the parties.

6. By letter dated 20 October 2022 the Tribunal advised the Applicant that the Tribunal only has jurisdiction to deal with applications against tenants by their landlord, that whilst there does not have to be a written tenancy agreement the Tribunal required the Applicant to confirm that the Respondent was a tenant and to advise when the tenancy started and how much rent was paid or due to be paid. The Applicant was requested to withdraw the Application if the Respondent was not the Applicant's tenant and that applications in relation to unlawful occupiers must be raised in the Sheriff Court. In the event the Respondent was a Tenant, the Applicant was also requested to provide information with regards to the validity of the Notice to Leave and whether the Application was valid. He was asked to provide this information by 3 November 2022. The Applicant has not responded to the Tribunal.

Reasons for Decision

7. 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. Section 16 of the Housing (Scotland) Act 2014 provides that -

"The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal—

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43))".

There is no provision transferring jurisdiction to the Tribunal to consider applications to remove unlawful occupiers. The Tribunal accordingly has no jurisdiction to consider the Application on the basis of the information supplied by the Applicant.

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, namely that it has no jurisdiction to do so. 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.

23 November 2022

Legal Member

Date