



Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017, as amended (“the Rules”)

Chamber Ref: FTS/HPC/EV/19/0112

Re: Property at 63A East Main Street, Uphall, EH12 5HZ (“the Property”)

Parties:

Mr Steven Burchill, 12 Silverbirch Glade, Livingstone, EH54 9JS (“the Applicant”)

Miss Emelia Baranowska, Mr Paul Clark, 63A East Main Street, Uphall, EH52 5HZ (“the Respondents”)

1. On 14 January 2019, an application was received from the Applicant. The application was made under Rule 66 of the Rules being an application for possession of property let under a Short Assured Tenancy on termination of that tenancy in terms of Section 33 of the Housing (Scotland) Act 1988. The following documents were enclosed with the application:-
 - (i) Tenancy Agreement dated 20 June 2014;
 - (ii) Form AT5 ;
 - (iii) Form AT6;
 - (iv) Notice to Local Authority section 11 Notice.
2. On 15 January 2019, the Chamber President issued a request for further information to be submitted in order that the application could proceed, namely a Notice to Quit and Section 33 Notice. These were submitted by the Applicant’s Representative on 5 February 2019.
3. The Tenancy Agreement and AT5 were in the names of the parties and signed by the parties. The initial period of the tenancy was stipulated as 20 June 2014 to 20 December 2014 and thereafter continuing on a monthly basis.

4. The two Notices to Quit (one in respect of each Respondent) and two Section 33 Notices (one in respect of each Respondent) were dated 20 November 2018 both stipulated the date on which they would take effect as 7 December 2018. No proof was submitted of the date of service of either notice on the Respondents.

DECISION

5. I have considered the application terms of Rule 8 of the 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.”

6. After consideration of the application, 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 Rules.

REASONS FOR 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. 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.

8. Section 33 of the 1988 Act provides as follows:-

33 - Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First –Tier Tribunal shall make an order for possession of the house if satisfied that—

(a) that the short assured tenancy has reached its ish;

(b) that tacit relocation is not operating;

(c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

9. The issue before me is whether recovery of possession of the property under Section 33 of the 1988 Act is competent. To recover possession of a short assured tenancy under Section 33 of the 1988 Act, the Tribunal must be satisfied that the requirements of this section are met. The tenancy was for an initial period of 6 months and thereafter, extended on a monthly basis. The first "ish date" in this case was 20 December 2014 and thereafter on the 20th of every month. The Notice to Quit and Section 33 Notice served in this case were dated 20 November 2018 and stated that the tenancy would terminate on 7 December 2018. This is not an ish date and the tenancy has not accordingly been terminated at an ish date.

10. In addition, Section 33 of the 1988 Act provides that the period of notice under Section 33 must be at least 2 months. A Notice to Quit must give at least 28 days (and in some circumstances at least 40 days notice) prior to the ish date. Proof of the date of service of the notices has not been submitted in this case but, even assuming service on the date the notices were dated ie. 20 November 2018, the notice period requirements have not been met, either in relation to the Notice to Quit and also, the Section 33 Notice.
11. An order for recovery of possession under Section 33 could not therefore be competently made by the Tribunal as the statutory requirements for such an application have not been met. Accordingly, the application has no prospect of success.
12. For the reasons set out above, it appears to me seems to me that the application is frivolous and should be rejected in terms of Rule 8(1)(a) of the Rules.

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 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 of the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

Ms Nicola Weir

Legal Member/Chair

11 March 2019

Date