



Decision with Statement of Reasons of Helen Forbes, 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/21/2330

Re: 32 Morrison Avenue, Tranent, East Lothian, EH33 2AR ("the Property")

Parties:

Scott Fraser ("the Applicant")

Morena Morgan ("the Respondent")

Tribunal Member:

Helen Forbes (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 66 on 28th September 2021. The following documents were enclosed with the application:
 - (i) Tenancy Agreement commencing on 1st April 2015
 - (ii) Form AT5
 - (iii) Notice to Quit with notice given to 30th September 2021
 - (iv) Section 33 Notice
2. The application was considered by the Tribunal and further information was requested by letter dated 21st October 2021, as follows:
 1. The Notice to Quit appears to be invalid as the date specified does not coincide with an ish or end date of the tenancy. An application under

Rule 66 must be accompanied by a valid notice to quit. Please clarify the basis upon which the Tribunal can consider the application.

2. If the application is to proceed, please provide a copy of the section 11 notice and evidence that it was sent to the local authority.

3. Please confirm the correct postcode for the property.

The Applicant was given until 4th November 2021 to respond, failing which the application may be rejected.

3. By letter dated 22nd October 2021, the Applicant responded providing the correct postcode, copy section 11 notice and the following explanation in terms of the Notice to Quit:

The original Notice to Quit was served on 30th March 2021 following discussions with my tenant and it was agreed that a 6 month notice period was acceptable. The date of termination (30th September 2021) was agreed as the original tenancy commenced on 1st April 2015 and tenant did not want to run the risk of the tenancy running into a new month and the issue of pro-rata rent becoming a factor after 30th September 2021

4. The application was considered by a legal member and a further request for information sent out on 18th November 2021 as follows:

1. Further to your response while we note and appreciate you have served a Notice to Quit to accommodate your tenant the basis of an application under S33 of the Housing Scotland Act 1988 is that the contractual tenancy has come to an end by the service of a Notice to Quit on an ish date. In this case your lease states that the termination date is 1st October and as the lease was for 6 months this means that the 2 ish dates or termination dates would appear to be 1st April and 1st October each year and unless the notice ends the contractual lease on an ish date it would appear the Notice is invalid and therefore the lease continues for a further 6 months by tacit relocation. Please note the s33 notice is not tied to a particular date and you have given the required 6 month notice for that.

2. Please let us have legal submissions why you believe that the notice to quit is valid or how otherwise the contractual tenancy may have come to an end allowing you to raise this action. You may wish to take further legal advice on this matter and respond with reference to case law or other authorities in your response, failing which your application may have to be rejected?

3. Please note that if you do provide legal submissions why the Notice to Quit may be valid or the lease terminated in another way then the matter may progress to a case management discussion where this will be explored and discussed further. If that is happens we will also require

evidence of posting and track and trace receipt of the notice to quit and s33 notice or confirmation that you will provide oral testimony about the hand delivery.

The information was requested by 2nd December 2021, informing the Applicant that failure to do so may result in the application being rejected. No information was received.

5. A further request for the above information was made on 17th December 2021, allowing a period of 14 days for a response. No response was received.
6. The application was considered further on 20th January 2022.

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-

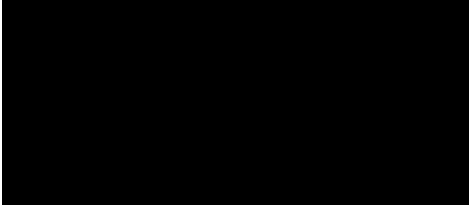
(a) they consider that the application is frivolous or vexatious;·
(c) they have good reason to believe that it would not be appropriate to accept the application;

(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."

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"*.
9. The application cannot proceed without a valid Notice to Quit.
10. 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.



Legal Member/Chair

20th January 2022
Date