



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/22/3411

Re: 234 North Dryburgh Road, Wishaw, ML2 7HL (Property)

Parties

Mr Liam Murray (Applicant)

Mr Miroslav Wik, Mrs Iventa Wikova (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 15 September 2022.

2. The application was considered by the Tribunal and further information was requested by letters of 21 October 2022 and 4 January 2023 as follows:

"Before a decision can be made, we need you to provide us with the following: 1. Please provide a copy of the tenancy agreement. 2. The Notice to leave appears to be dated 7 September 2022. However, the date specified in the notice as the earliest date that proceedings can be raised is 27 June

2022. Clearly one of these dates is incorrect. Please confirm when the notice was served and provide evidence of this. If the notice was served on or after 7 September the notice will be invalid as the date specified is wrong. If this is the case, please advise if the application is to be withdrawn. 3. If the application is to proceed, please provide the following: (a) An amended application form. Ground 11 cannot be used for rent. If the application is only based on rent arrears, only ground 12 should be specified. (b) Evidence of landlord registration. (c) A rent statement for the relevant period which shows the rent due, the rent paid and the running total outstanding. (d) Evidence that the section 11 notice was issued to the Local Authority. (e) If you have complied with the Rent Arrears Pre Action Requirements regulations, evidence of this. Please note that this will be taken into account when the Tribunal assesses if it will be reasonable to evict. Guidance and template letters are available on the Scottish Government website.”

No response was received to any of the requests for information.

Reasons for Decision

3. 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."

4. '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"*.

5. Rule 109 of the Tribunal Procedure Rules provides:

Application for an eviction order

109. Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the application must—

(a)state—

(i)the name, address and registration number (if any) of the landlord;

(ii)the name, address and profession of any representative of the landlord;

- (iii) the name and address of the tenant (if known); and
- (iv) the ground or grounds for eviction;
- (b) be accompanied by—
 - (i) evidence showing that the eviction ground or grounds has been met;
 - (ii) a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act; and
 - (iii) a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and
 - (iv) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and
- (c) be signed and dated by the landlord or a representative of the landlord.

The Applicant has failed to provide necessary information. The Tribunal could not grant the order sought.

6. 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.

Alan Strain

3 February 2023

Legal Member/Chair

Date