



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/21/1598

Re: 167 Main Street, Prestwick, South Ayrshire, KA9 1LB ("the Property")

Parties

Miss Alette Gregory (Applicant)
Ms Denise McKechnie (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 rejected 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 5 July 2021. The following relevant documents were enclosed with the application:

- (i) SAT commencing 15 October 2014 for a renewable period of 12 months ending 14 October;
- (ii) Notice to Quit dated 12 December 2020 which specified 20 June 2021 as the date to quit;
- (iii) Section 33 Notice dated 12 December 2020 which specified 20 June 2021 as the date to quit;
- (iv) Section 11 Notice to local authority;
- (v) AT6;
- (vi) AT5;
- (vii) Rent Statement.

2. The application was considered by the Tribunal and further information was requested by letter of 10 March 2021 as follows:

“Before a decision can be made, we need you to provide us with the following:

- 1. Please provide a copy of the section 11 Homelessness Notice that you sent to the local authority and proof of service;*
- 2. Please provide proof of service of the notice to quit and section 33 notice on the respondent;*
- 3. Please provide your comments on the validity of the notice to quit. The notice to quit does not contain the wording prescribed by The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988. Further, the notice to quit specifies 20 June 2021 as the date the respondent is to quit by. The tenancy runs for renewable periods of 12 months from 15 October to 14 October. The date to quit does not therefor coincide with the “ish” date of the tenancy and has not validly terminated the tenancy.*

Please reply to this office with the necessary information by 4 August 2021. If we do not hear from you within this time, the President may decide to reject the application..”

3. The Applicant responded on 21 July 2021 informing the Tribunal:

“I can forward you copies of documents and take photographs of ‘proof of postage’ receipts but I cannot send them as one document. I would need to forward a series of emails. I hope that would not be too annoying for you. 1) I have the Section 11 notice and acknowledgement from the council officer that it has been received. 2) The notice to quit and section 33 notice I put through the door myself and also sent copies in the post and have proof of postage of that. I also have text conversations about the documents with the tenant after she received them. The lease was a short term lease with a one month’s notice to quit agreement for both sides. I understood that because of covid I had to give 6 months notice. I didn’t make the date exactly six months from the day I handed in, and posted, the forms. I added a few days in case of delays in the tenant getting the post. I was trying to be so correct. I’m sorry if I have made a mistake. I tried very hard to follow the instructions on the website. May I send to you the section 11 notice, the council acknowledgement and a photo of the proof of postage? Is there anything else I should add.”

Reasons for Decision

4. 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. The application seeks to proceed under Rule 66. In order to do so the tenancy must have been validly terminated at its ish. The tenancy was for a period of 12 months from 15 October 2014 to 14 October 2015. It renewed each year for a further 12 month period by tacit relocation. The Notice to Quit does not coincide with the ish date of the tenancy and the tenancy does not allow for its termination on the basis of any of the Grounds in Schedule 5 to the Act.

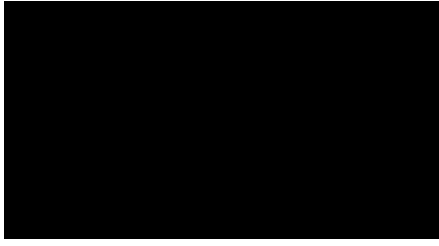
The tenancy has not been validly terminated and continues. As the tenancy has not been terminated and there is no provision within the tenancy to allow its termination on the basis of Grounds in Schedule 5 to the Act the Tribunal cannot grant the order sought.

Furthermore, the Notice to Quit does not contain the statutory wording required by *The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988*. The Notice to Quit is invalid.

7. In light of the above reasons the Tribunal cannot grant the order sought. 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.



6 August 2021

Legal Member/Chair

Date