



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/22/2607

Re: 10 Firth Garden, Brassie, Troon, KA10 6TQ ("the Property")

Parties

Mrs Jacqueline Webster (Applicant)

Mr Michael Proctor, MS Margaret Campbell (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 29 July 2022. The following relevant document was enclosed with the application - SAT commencing 8 August 2014 and ending 8 February 2015. The SAT specified that it continued "month to month thereafter calculated to the 8th of each month".

2. The application was considered by the Tribunal and further information was requested by letter of 2 September 2022 as follows:

"1. The Notice to Quit does not appear to have been served to an ish date of the tenancy. Please provide your written representations as to the validity of the Notice, or consider whether the application ought to be withdrawn and a new application lodged after service of a valid Notice to Quit."

3. The Applicant responded on 6 September 2022 informing the Tribunal:

"1: notice to quit. The lease date started on the 8th of the month, therefore should run to the 7th of the following month and that should be the ish date. Based on this fact we believe that the 8th would be the start of a further month."

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 6 months commencing 8 August 2014 and ending 8 February 2015. The SAT specified that it continued "month to month thereafter calculated to the 8th of each month. The Notice to Quit does not coincide with the ish date of the tenancy.

The tenancy has not been validly terminated and continues. As the tenancy has not been terminated the Tribunal cannot grant the order sought.

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.

Alan Strain

12 October 2022

Legal Member/Chair

Date