



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/22/2885

Parties

Dr Anthony Douglas (Applicant)

Mr Abdulmecit Barskanmay, Mrs Yeter Barskanmay (Respondent)

Re: 8 Thistle Court, Galashiels, TD1 1HZ ("the Property")

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 16 August 2022. The following relevant document was enclosed with the application - SAT commencing 12 October 2016 and ending 13 April 2017. The SAT specified that it continued "monthly thereafter".

2. The application was considered by the Tribunal and further information was requested by letter of 21 September 2022 as follows:

"1. The Notice to Quit appears to be invalid as the date specified is not an ish date. The Notice specifies 12 August 2022. The tenancy continued on a month to month basis from 13 April 2017. Please explain the basis upon which the Tribunal can consider the application."

3. The Applicant responded on 21 September 2022 informing the Tribunal:

“Yes it would appear that the ish date technically should have been the 13th August. My tenants were on a rolling monthly tenancy after the first year of tenancy. Because of Government policy in February 2022, my tenants were effectively given 6 months notice. I did this in good faith so that they had plenty of time to find alternative accommodation. The policy changed in March, to 84 days. So, the ish date would have been more than covered within the legal notice period of 84 days. I would be grateful if you would consider that my error/ misunderstanding concerning the ish date be considered as the tenant has benefited from a six month notice period giving them considerable time to find alternative accommodation.”

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 12 October 2016 and ending 13 April 2017. The SAT specified that it continued “monthly thereafter”. The Notice to Quit does not coincide with the ish date of the tenancy.

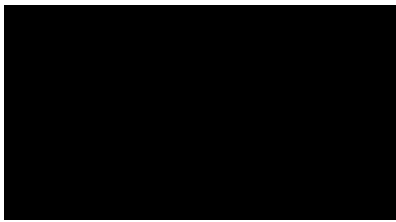
The tenancy has not been validly terminated and continues. As the tenancy has not been terminated the Tribunal cannot grant the order sought. The Tribunal has no discretion in the matter.

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.



25 October 2022

Legal Member/Chair

Date