



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/21/1704

Re: 6 Benlister Terrace, Lamlash, Isle of Arran, KA11 1DD ("the Property")

Parties

Mr Samuel Greer (Applicant)
Mr Lukas Gren (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 65 on 15 July 2021.
2. The tenancy agreement founded upon was an English form Assured Shorthold Tenancy (**tenancy**) commencing on 22 October 2012 for a period of 12 months ending 21 October 2013. The tenancy continued by tacit relocation for periods of 12 months thereafter.
3. The Applicant purported to terminate the SAT by serving a Notice to Quit on 6 November 2020 which specified the "ish" date as 7 May 2021.
4. The Tribunal considered the application and wrote to the Applicant on 24 August 2021 asking "You are required to provide your comments on the notice to quit. The

one you have provided is unsigned and incomplete. On the face of it is invalid. The legal member has seeks your comments on its validity. In order to progress with your application you require to provide a valid notice to quit. We would suggest that you seek legal advice on the validity of the notice to quit and whether or not you should serve a further notice to quit.”

5. The Applicant responded by email of 7 September 2021 enclosing copy correspondence from his agents stating that the Notice to Quit was valid.

Reasons for Decision

6. 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."

7. '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"*.

8. The application seeks to proceed under Rule 65. In order to do so the Applicant must have validly terminated the tenancy. The *ish* date of the tenancy is the 21st October each year as the tenancy continues by tacit relocation each year. The Notice to Quit states 7 May 2021 as the date by which the Respondent should quit and remove - which was patently wrong. The tenancy was not validly terminated and continues as a consequence.

9. 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

23 September 2020

Legal Member/Chair

Date