



Decision with Statement of Reasons of H Forbes, 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/22/1961

Re: 8 Grahamshill Avenue, Airdrie, ML6 7EP ("the Property")

Parties:

James McNamee ("the Applicant")

Trainer Alston Solicitors ("the Applicant representative")

Debbie McCormack ("the Respondent")

Tribunal Member:

Ms H Forbes (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 from the Applicant under Rule 65 on 17th June 2022 with copy tenancy agreement, notice to leave and section 11 notice.
2. The application was considered by a legal member of the Tribunal and by letter dated 7th July 2022, sent by email, the following information was requested from the Applicant:

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

1. You have applied under Rule 65 which is an application for eviction in respect of a tenancy under the Housing (Scotland) Act 1988 which requires a notice to quit and a form AT6 to be lodged with the application. You have instead provide a copy notice to leave which is the form that applies when a tenancy is entered into after December 2017. The one page of the tenancy agreement you have lodged states the date of commencement as being 24th November 2010 and continuing on a monthly basis thereafter. Please therefore provide a notice to quit and form AT6 giving notice of the grounds you are seeking eviction on in terms of the 1988 Act and evidence of how and when this was served on the Tenant.

2. Please also advise which ground you are relying on in terms of schedule 5 of the 1988 Act.

3. Please provide evidence of service of the S11 notice to the local authority.

Please reply to this office with the necessary information by 21 July 2022. If we do not hear from you within this time, the President may decide to reject the application.

3. Following email correspondence with the Applicant, he confirmed that he had not seen the earlier correspondence sent by email.
4. By email dated 4th August 2022, the Applicant submitted further documentation, including a Notice to Quit requiring the Respondent to remove by 25th April 2022, and Form AT6.
5. The application was considered by a legal member of the Tribunal and by letter dated 22nd August 2022, sent by email, the following information was requested from the Applicant:

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

1. The Notice to Quit you have submitted appears to be invalid as the date specified does not appear to coincide with an ish or end date of the tenancy, if the lease you have submitted is the current tenancy agreement. Furthermore, the Notice does not contain the prescribed information for assured tenancies.

2. The AT6 lodged also appears to be invalid for a number of reasons. Firstly, it is dated 25 January 2022 but the version of the Notice you have used is for notices served after 30 March 2022. The Notice is based on ground 1 which applies when the landlord intends to return to reside at the property. However, the notice states that it is a family member who intends to reside there so ground 1 does not apply.

3. You have not provided evidence of service of these notices on the Respondent.

4. You have provided a further copy of the section 11 notice. This is not what was requested. Please provide evidence that the Notice was sent to the Local Authority.

As it presently stands, it does not appear that the application can be accepted. Please provide valid notices, with evidence of service, or clarify why you believe the Tribunal can entertain the application.. You may wish to take legal advice before you respond.

Please reply to this office with the necessary information by 5 September 2022. If we do not hear from you within this time, the President may decide to reject the application.

6. By email dated 14th September 2022, the Applicant representative informed the Tribunal of their instruction, enclosing a mandate.
7. The application was considered by a legal member of the Tribunal and by letter dated 27th October 2022, sent by email, the following information was requested from the Applicant representative:

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

1. Please provide the information requested in the tribunal's letter of 22 August 2022
2. Please confirm the identity of the representative Please reply to this office with the necessary information by 10 November 2022.

If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

8. The application was considered by a legal member of the Tribunal and by letter dated 7th December 2022, sent by post and email, the following information was requested from the Applicant representative:

We have not received a response to our letter of 22nd August 2022, a copy of which is enclosed. The application cannot proceed without this information. If we do not hear from you within 14 days, the application is likely to be rejected.

Please reply to this office with the necessary information by 21 December 2022. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

9. The application was considered by a legal member of the Tribunal and by email dated 11th January 2023, the following information was requested from the Applicant representative:

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

- The tribunal refers to the letters it sent to you on 27 October and 7 December 2022 having been advised that you act for the applicant. The tribunal notes that you have failed to respond to these letters and these letters and have not provided the information requested by the tribunal.
- We would refer you again to our letters and ask that you now provide the information requested.
- If you fail to respond to this letter in appropriate and full terms and to provide the required information which has now been requested on a number of occasions then the tribunal is likely to have no option but to reject your application. You should be aware that the Tribunal has the power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Please reply to this office with the necessary information by 25 January 2023.

No response was received.

10. The application was considered by a legal member on 17th February 2023.

Reasons for Decision

11. 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."

12. '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"*.
13. The application cannot be accepted in its current form. The Form AT6 appears to be invalid, and the Notice to Quit does not contain the prescribed information as required by The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988. There is no evidence that the notices have been served upon the Respondent.
14. 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 futile, misconceived and hopeless.
15. There is good reason to believe that it would not be appropriate to accept the application.
16. 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.

H Forbes

Legal Member/Chair

17th February 2023
Date