



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/22/3755

Re: 7 Kirk Street, Edinburgh, EH6 5EX ("the Property")

Parties

Miss Jie Song (Applicant)
Mr Raymond Lower (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 11 October 2022.
2. The tenancy agreement (**tenancy**) commenced on 25 October 2009 until 24 January 2010 and then from month to month thereafter.
3. The Applicant purported to terminate the tenancy by serving a Notice to Quit which specified the "ish" date as 25 September 2022.
4. The Applicant served an AT6 dated 6 October 2022 under Grounds 1, 11 and 12 of the Housing (Scotland) Act 1988 (**Act**) by email on the Respondent. The Form AT6 did not specify the earliest date proceedings could be raised.

5. The Application sought to proceed on the basis of 3 months' rent arrears (Ground 8), breach of contract (Ground 13) and the landlord's intention to sell the Property (which is not a ground for recovery of possession under the Act).

6. The Tribunal considered the application and wrote to the Applicant in the following terms on 25 November 2022:

Before a decision can be made, we need you to provide us with the following: 1. You state the application is under rule 65. You have not provided a valid AT6 document as the document you have submitted does not state on which date proceedings can be raised in part 4 of the form. It also does not appear to state the grounds corresponding to schedule 5 of the Housing (Scotland) Act 1988. Please provide a valid AT6 document together with proof of service on the Respondent. 2. You state the Notice and AT6 document were emailed to the tenant. This is not a valid method of service. Please provide evidence of how and when the AT6 notice and the Notice to Quit were served on the Respondent. 3. You state as the grounds for the application grounds 1, 11 and 12. These appear to correspond to the grounds for eviction stated in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 but you state the application is made under rule 65, which relates to tenancies under the Housing (Scotland) Act 1988 and indeed you have provided a tenancy which started before the 2016 Act came into force. Thus please amend the grounds to the grounds in the correct legislation. Please bear in mind that sale of a property is not an eviction ground under the Housing (Scotland) Act 1988. Please provide an amended application form with the applicable grounds listed in part 5 of the application. 4. You have provided a Notice to Leave. Please note that this is not a valid notice for a tenancy under the Housing (Scotland) Act 1988. Please clarify which notice you are relying on for this application. 5. Please provide evidence of service of the S 11 notice to the local authority. 6. Please provide a rent statement in the following format: date, rent due, rent paid, running total of arrears so it is clear when the arrears arose and how long and to what extent these have been in place. You may wish to take legal advice before you reply to this request. Please note that the application at present would have to be rejected unless the above information and documentation is provided.

7. The Applicant responded by producing amended versions of the AT6 and stating these had been subsequently served recorded delivery on the Respondent (no evidence of service was produced). The Applicant also stated the Notice to Quit was served recorded delivery on 20 December 2022 but again did not produce evidence of this.

8. The Tribunal wrote again to the Applicant on 6 January 2023 in the following terms:

Before a decision can be made, we need you to provide us with the following: 1. You have not responded fully to the points made in our letter of 25th November 2022. Please provide a full response to the outstanding points. 2. You have provided a new Form AT6. This is not competent. The application can only proceed on the Form AT6 previously served, and that Form does not seem to be valid. 3. In all the circumstances, your application would seem to have little prospect of success. You may wish to take legal advice on this matter, as previously discussed. Please confirm if you wish to withdraw the application at this time. Please reply to this office with the necessary information by 20 January 2023. If we do not hear from you within this time, the President may decide to reject the application.

9. The Applicant responded by email of 11 January 2023 in the following terms:

Thanks for your email. I really prefer not to withdraw the application since it has taken very long time from 2020. Giving Raymond's behave such as benefit fraud for so many years and still try on, taken

away deposit from landlord, rental arrears, deny landlord access so on which should be classified as anti-social behaviour. If we can not do anything about it which means everyone can do whatever they like without consequence and no one can tell them that you should not do it and stop them. Regarding every point in the HPC letter on 25/11/22, my corresponding reply is as following: 1. I have record posted attached AT6 form (updated) to Raymond on 20/12/22 and emailed him on 23/7/22 (before updated). 2. I also record posted Notice to quit to Raymond at same time on 20/12/22. 3. I would like to add anti social behaviour to the AT6 form but I do not know which ground should be. 4. I am relying on Notice to Quit not Notice to Leave. 5. I have sent relevant information to HPC before. 6. rental arrear: date rent due rent paid arrear sum 25/2/22 435 410.89 24.11 25/3/22 435 410.89 48.22 25/4/22 435 410.89 72.33 25/5/22 435 410.89 96.44 25/6/22 435 410.89 120.55 25/7/22 435 410.89 144.66 25/8/22 435 410.89 168.77 25/9/22 435 410.89 192.88 25/10/22 435 410.89 216.99 25/11/22 435 410.89 241.10 In addition, according to contract, he should pay his half council tax which is 51.58 pounds per month but he never pays it and I have to pay it for him as it is landlord's duty and so far I paid his council tax in total: $51.58 * 10(\text{month}) = 515.80$ pounds Please feel free to contact me if you specify any points I missed out

Reasons for Decision

10. 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."*

11. '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"*.

12. The application seeks to proceed under Rule 65. In order to do so the Applicant must have validly terminated the tenancy. The tenancy commenced on 25 October 2009 until 24 January 2010 and then from month to month thereafter. The Notice to Quit states 25 September 2022 as the date by which the Respondent should quit and remove. No evidence of service of the Notice to Quit has been produced. It appears that the tenancy was not validly terminated at an "ish" date and continues as a consequence.

13. The Applicant relies upon the original and then an amended AT6 (which is not competent). No evidence of service of the AT6 has been produced. The original AT6 was incomplete. No valid AT6 has been served on the Respondent.

14. In light of the above the Tribunal concluded that that the application had no prospect of success on the basis that the notice to quit had not validly terminated the tenancy and the provisions of section 19 have not been complied with. 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.

A Strain

2 February 2023

Legal Member/Chair

Date