



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/22/3743

Re: 137 Maxwell Drive, Glasgow, G41 5AE ("the Property")

Parties:

Abdul Waheed ("the Applicant")

Mohammed Sarfraz, Zabeeda Kousar ("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 under Rule 66 on 10th October 2022, with copy tenancy agreement, Form AT5, Notices to Quit and section 33 notices, and section 11 notice.
2. The application was considered by a legal member of the Tribunal and further information was requested from the Applicant by letter dated 11th November 2022, requesting a response by 25th November 2022, failing which the application may be rejected, as follows:

Can you please provide proof of service of the notices upon Mrs Zabeeda Kousar who is one of the joint tenants. You have provided a certificate of service from sheriff officers in respect of service only on Mohammed Sarfraz, the other joint tenant.

In order to create a short assured tenancy it is a legal requirement that an AT5 form in the statutorily prescribed format is served on each joint tenant. The copy form which you have submitted does not appear to be in the statutorily prescribed different format. Can you please provide a copy of a dated and signed form AT5 in the correct format with evidence of service of that form upon each joint tenant. If such a form has not been served then please explain the basis that you believe that the tenancy is a short assured tenancy in terms of section 32 of the Housing (Scotland) Act 1988. If the tenancy is not a short assured tenancy then please explain why you believe the eviction procedure under section 33 of that Act can be utilized.

You may wish to obtain independent legal advice on the matters contained in this letter

No response was received.

3. The application was considered by a legal member of the Tribunal and by letter dated 20th December 2022, a further opportunity to provide the information requested was given, with a response requested by 3rd January 2023, failing which the application may be rejected, as follows:

In order for the Tribunal to be able to process your application further please provide the undernoted information /documentation: Please find a copy of the previous letter from the Tribunal issued to you on 11.11.22. Please now provide the information requested. If this is not received please note that the application may be rejected.

No response was received.

4. The application was considered by a legal member on 31st January 2023.

Reasons for Decision

5. 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;

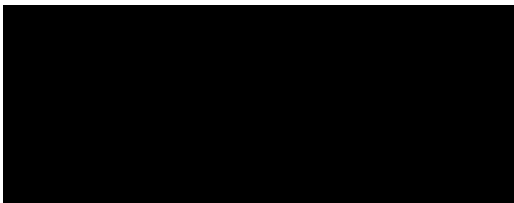
(c) they have good reason to believe that it would not be appropriate to accept the application;

(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."

6. '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"*.
7. The application cannot proceed without a copy of a valid notice in the statutorily prescribed format as required by section 32 of the Housing (Scotland) Act 1988 informing the tenant that the tenancy is a short assured tenancy. Neither can it proceed in the absence of evidence of service of the requisite termination notices upon the Respondents.
8. 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. 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.



Legal Member/Chair

31st January 2023
Date