



Decision with Statement of Reasons of Fiona Watson, Legal Member of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/19/3471

**Re: Property at 26 Spey Place, Johnstone, PA5 0PT
 (“the Property”)**

Parties:

Mr Craig Campbell, The Knowe, Easwald Bank, Kilbarchan, PA10 2HA (“the Applicant”)

Mr Barry Colquhoun, 26 Spey Place, Johnstone, PA5 0PT (“the Respondent”)

1. On 28 October 2019 an application was received from the applicant. The application was made under Rule 109 of the Rules being an application by a landlord for possession of a property let under an Private Residential Tenancy in terms of section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The following documents were enclosed with the application:
 - (i) Copy Private Residential Tenancy Agreement
 - (ii) Copy Notice to Leave

2. A request for further information was sent to the Applicant on 31 October 2019. The applicant responded by providing the following additional documents:
 - (i) Copy notification under s11 of the Homelessness etc. (Scotland) Act 2003
 - (ii) Rent statement

Decision

3. I considered the Application in terms of Rule 109 of the Rules which states as follows:

“Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the application must—

(a) state—

(i) the name, address and registration number (if any) of the landlord;

(ii) the name, address and profession of any representative of the landlord;

(iii) the name and address of the tenant (if known); and

(iv) the ground or grounds for eviction;

(b) be accompanied by—

(i) evidence showing that the eviction ground or grounds has been met;

(ii) a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act; and

(iii) a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and

(iv) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and

(c) be signed and dated by the landlord or a representative of the landlord.

4. I also considered the Application in terms of Rule 8 of the Rules. Rule 8 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;

(b) the dispute to which the application relates has been resolved;

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

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(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. After consideration of the application and the documents provided by the Applicant I consider that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Rules.

REASONS FOR DECISION

6. “Frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Midlenhall) 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.”* It is that definition which I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived, and has no prospect of success.

7. Section 51 of the 2016 Act states as follows:

“51 First-tier Tribunal's power to issue an eviction order

(1)The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2)The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3)The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4)An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.”

8. Part 5 of the application submitted by the applicant requires the applicant to “*set out each of the grounds/cases for possession/eviction here and a brief description for each of the grounds/cases of the circumstances that led to the application being made.*” Part 5 of the application is completed by the applicant as follows:

“Ground 8 – at least 3 mths (sic) rent is in arrears

Ground 12 – some rent is unpaid at the start of proceedings

Ground 11 - the tenant has persistently delayed paying rent.”

9. The grounds as referred to by the applicant do not correspond with those grounds as contained within Schedule 3 to the 2016 Act and accordingly are not grounds which can be relied upon to seek repossession of a Private Residential Tenancy. If the Applicant seeks to raise an application seeking reliance on the relevant rent arrears ground for a Private Residential Tenancy, this is Ground 12 as contained within Schedule 3 to the 2016 Act. Ground 12 of Schedule 3 to the 2016 Act states as follows:

“Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2)The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.”

10. Grounds 8, 11 and 12 as relied upon by the applicant in Part 5 of their application are not contained within the 2016 Act and it would appear the applicant is in fact making reference to grounds which are contained within Schedule 5 to the Housing (Scotland) Act 1988 and which have no relevance to the repossession of Private Residential Tenancies.

11. Accordingly, the terms of Rule 109 (a) (iv) have not been complied with as the application does not state competent grounds for eviction to be relied upon and on that basis I consider that the application for an order for repossession should

be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Rules.

12. It should also be noted that the Notice to Leave lodged alongside the application also refers at Part 3 of the said Notice that the grounds being relied upon are Grounds 8, 11 and 12 as stated above and which are replicated in Part 5 of the application. Section 62 of the 2016 Act states as follows:

“62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.”

13. The Notice to Leave does not set out any of the grounds of repossession as contained Schedule 3 to the 2016 Act. It accordingly does not comply with section 62(c) of the 2016 Act and on that basis I also consider that the application for an order for repossession should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Rules.

What you should do now

If you accept the Legal member's decision, there is no need to reply.

If you disagree with this decision:-

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, 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. Information about the appeal procedure can be forwarded to you on request,

Mrs Fiona Watson
Legal Member
13 November 2019