



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/23/0103

Re: 9 2/2 Kaims Terrace, Livingston, West Lothian, EH54 7EX ("the Property")

Parties

**Mr Stephen Nelson, Mrs Dorothy Nelson (Applicant)
Mr Stephen McCann (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 12 January 2023.
2. The tenancy agreement (**tenancy**) commenced on 11 November 2010 for a period of 6 months and then from month to month thereafter.
3. The Applicant purported to terminate the tenancy by serving a Notice to Quit which did not specify an "ish" date. The Notice to Quit did not contain the prescribed information required under the Assured Tenancies (Notice to Quit Prescribed Information) (Scotland) Regulations 1988. The Notice to Quit was in the following terms:

"We Stephen Nelson and Dorothy Nelson of 53 Station Road, Broxburn EH52 5QU are giving Stephen McCann 2 months' notice from the 11th November 2022 to vacate our property at 9 2/2 Kaims Terrace, Livingston, West Lothian, EH54 7EX."

4. The Applicant purported to serve an AT6 on the Respondent. The Applicant did not use the prescribed Form AT6 and instead sent a message to the Respondent in the following terms:

“AT6

When this Notice to Quit runs out as your landlord we still have to get an eviction order from the First–Tier Tribunal for Scotland (Housing and Property Chamber) before you as our tenant have to leave.

If you wish to seek independent advice you can find this at Shelter or Citizens Advice Bureau.”

The AT6 did not specify the earliest date proceedings could be raised nor did it specify the Grounds of the Housing (Scotland) Act 1988 (**Act**) relied upon. The AT6 accordingly did not comply with section 19 of the Act.

5. The Application sought to proceed on the basis of what was asserted to be Ground 1A. The Applicant asserted that this Ground was “the Landlord intends to sell the let Property to alleviate financial hardship”. Ground 1A of the Act is “Landlord intends to live in property to alleviate financial hardship”. The Ground asserted by the Applicant 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: The tribunal acknowledges receipt of your application, which has been reviewed by a legal member of the tribunal who has raised the following matters. You have provided evidence (by means of slightly blurred photocopies) which seems to show that that the various notices (Notice to Quit/AT6/section 33 notice) were emailed or texted to the tenant on 11 November 2022. Please provide confirmation of the method of service of the notices and please also provide clear and fully legible copies of the various notices.

If you have served these notices by electronic means of communications, please provide your submissions on whether such delivery is lawful given the terms of section 54 of the Housing (Scotland) Act 1988 which sets out the methods of service of notices (the AT6 and the section 33 notice) required in terms of that Act. If electronic service of the notices is not valid, please provide proof of service of the relevant Notices on the tenant by a lawful method .

No Copy of the Form AT6 appears to have been lodged. Please lodge a copy of the Form AT6 to enable the tribunal to consider its terms and to consider whether it complies with the relevant provisions of the 1988 Act.

Your attention is also drawn to the requirements of the Assured Tenancies (Notice to Quit Prescribed Information) (Scotland) Regulations 1988 and you are invited to consider whether the notice to quit which you claim to have served on the tenants meets the requirements of those regulations. In the notice to quit which has been provided, no specific date is indicated upon which the tenant requires to quit the premises. Does the notice to quit specify a removal date, which is an “ish”, or end date of the tenancy? If not on what basis is the purported notice effective and valid in law? Please also provide your submissions on the validity of the service of the Notice to Quit by electronic means.

In your application, you state you are seeking to rely upon “ground 1A” which you describe as “the landlord intends to sell the property to alleviate financial hardship”. That ground does not apply in those terms to tenancies under the Housing (Scotland) Act 1988. Have you confused the relevant grounds which apply to the tenancy which you have granted (which appears to be a short assured tenancy under the Housing (Scotland) Act 1988) with those which apply to private residential tenancy under and in terms of the Private Housing (Tenancies) (Scotland) Act 2016.

Ground 1A in the 1988 Act (as inserted by the Cost of Living (Tenant Protection) (Scotland) Act 2022) allows a landlord to seek an eviction order where the landlord is (a) suffering financial hardship, and (b) intends to alleviate that hardship by occupying the let house as the landlord’s only or principal home for at least 3 months.

Given that you have stated you wish to sell the property, on what basis is the specified eviction ground being met when it seems clear you do not intend to occupy the property as your principal home but simply wish to sell it to raise funds to enable you to complete renovations to the home, which you currently occupy? What “financial hardship” are you suffering which is to be alleviated?

Upon receipt of the above information, a final decision can then be taken on whether the eviction application is valid and whether it should be accepted and referred to the tribunal for full determination. Please reply to this request within three weeks of the date of the letter. If you fail to respond to this letter then the tribunal may 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.

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

7. The Applicant responded by email of 3 February 2023 producing copies of the purported AT6, Notice to Quit and Section 33 Notice. The covering email stated:

“Thank you for confirming all information should be sent to yourselves.

In response to the further information requested by the first-tier tribunal Scotland this is as follows:

I can confirm that the Notice to Quit, AT6 and Section 33 Notice were emailed to the tenant on 11 November 2022 and our tenant confirmed receipt of these by email on 11 November 2022. Copies of these documents are attached to this email.

I can confirm electronic means of communication is lawful under the terms of the section 54 of the Housing (Scotland) Act 1988. The AT6 form (included in the attached documents) does include the ‘ish’ date which is the 11th of the month and subsequently the Notice to Quit was served on 11 November 2022. Electronic means of communication is a valid means of serving the Notice to Quit.

We are currently suffering financial hardship due to the cost of living crisis and material/labour increases resulting in us being unable to complete necessary renovation work on our house. Our monthly outgoings exceed our monthly income (from pensions). With the recent interest rate increases we are currently in a deficit of £150 per month with the rental income from this property. We have no means to pay this deficit which will increase with further interest rate rises and due to the current cap of 0% on rent increases we can’t increase the rent. We need to sell this property to prevent us going into debt and to allow us to complete the necessary work on our house.”

Reasons for Decision

8. 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."

9. '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"*.

10. 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 11 November 2010 for a period of 6 months and then from month to month thereafter. The Notice to Quit did not specify an "ish" date. The Notice to Quit did not contain the prescribed information required under the Assured Tenancies (Notice to Quit Prescribed Information) (Scotland) Regulations 1988 and was invalid as a consequence. The tenancy was not validly terminated at an "ish" date and continues as a consequence.

11. The Applicant relies upon the purported AT6. The AT6 did not specify the earliest date proceedings could be raised nor did it specify the Grounds of the Housing (Scotland) Act 1988 (**Act**) relied upon. The AT6 accordingly did not comply with section 19 of the Act. No valid AT6 has been served on the Respondent.

12. The Applicant sought to rely upon a non-existent Ground for recovery of possession of the Property. The Tribunal could not grant the order that the Applicant sought on the Ground relied upon.

13. The Tribunal also noted that the Applicant had not produced a section 11 Homelessness Notice or proof of service of such Notice on the local authority as required under section 56(1) of the 2016 Act.

14. In light of the above the Tribunal concluded that that the application had no prospect of success. 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 February 2023

Legal Member/Chair

Date