



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/22/2965

Re: 146 Monkland Avenue, Kirkintilloch, Glasgow, G66 3BS ("the Property")

Parties

Miss Jennifer Walls (Applicant)

Mrs Lisa-Marie McErlane (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 originally under Rule 66 on 22 August 2022. The grounds for possession/eviction were stated to be termination of a short assured tenancy under the Housing (Scotland) Act 1988 (**Act**). The following documents (of relevance to this decision) were enclosed with the application:

- (i) Short Assured Tenancy (**SAT**) which described the landlords as Margo Walls and Jim Johnston and the tenants as the Respondent and Mr David McErlane commencing 23 September 2012 to 23 September 2013;
- (ii) Notice to Quit dated 23 September 2021 and section 33 notice dated 31 August 2021 both specifying that the tenancy would terminate on 30 November 2021;

- (iii) The Notice to Quit stated that it was being served under Ground 1;
- (iv) No proof of service of the Notice to Quit, section 33 Notice or section 11 Notice was produced;
- (v) The AT5 document was incomplete.

2. The application was considered by the Tribunal and further information was requested by letter of 4 October 2022. In particular the Applicant was requested to provide the following further information:

“Before a decision can be made, we need you to provide us with the following: 1. The application is only made in the name of Ms Walls, who is not an owner of the property. The tenancy agreement is in the name of joint landlords. Please provide written confirmation that the owner of the property authorised the current Applicant to act as landlord for the property. 2. S 55 (3) of the Housing (Scotland) Act 1988 states: “Where two or more persons jointly constitute either the landlord or the tenant in relation to a tenancy, then, except where otherwise provided, any reference in this Part of this Act to the landlord or to the tenant is a reference to all the persons who jointly constitute the landlord or the tenant, as the case may require.” The application is only made against one tenant. The application is only made in the name of one landlord stated in the lease. Please consider amending this for it to be a valid application. 3. Please provide a copy of the Notice to Quit which was sent in compliance with the requirement under the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 as amended by Regulation 3 of the First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 and in force at the time the Notice was issued. 4. Please state how you think that the Notice to Quit was issued to a valid ish date. In part 5 of the application please refer to the ground relevant to the proceedings and the relevant legislation. Please explain why you have made reference to ground 1, which does not seem to be relevant to the S 33 proceedings. 6. The S 33 Notice issued does not seem to comply with the 6 months period prescribed at the time under the Coronavirus (Scotland) Act 2020 and is missing the date when vacant possession is required. Please provide a valid S 33 notice or make written representations as to why you consider this to be valid. 7. Please provide evidence of the service of the S 33 notice, the Notice to Quit and the S 11 notice. 8. The s 11 notice refers to proceedings under the Private Housing (Tenancies) (Scotland) Act 2016. Rule 66 applications relate to the Housing (Scotland) Act 1988. Please provide a valid S 11 notice with proof of service. 9. Please provide the AT5 document. The one provided is missing page 2 and the rest of the pages after page 3. Please consider to take some legal advice on the matter as the application in the current form would likely have to be rejected given the above comments. Please reply to this office with the necessary information by 18 October 2022. If we do not hear from you within this time, the President may decide to reject the application.”

3. No response was received. The Tribunal sent reminders on 17 November 2022 and 21 December 2022. The Applicant replied by email of 21 December 2022 and asked for assistance and advice from the Tribunal. The Tribunal responded by letter of 12 January 2023 in the following terms (in so far as was relevant to the Decision):

“Before a decision can be made, we need you to provide us with the following: In your most recent email of 21 December 2022, you ask the tribunal to provide you with certain information and advice on how you should proceed. The tribunal is an independent judicial body and is unable to provide advice to applicants in respect of the manner in which they should proceed. You have been asked by the tribunal to provide further information in terms of letters sent to you on 4 October 2022 And 17 November 2022. We would strongly advise

you to seek independent legal advice on this matter. Such advice can be obtained from a solicitor or an appropriate advice agency. The tribunal is willing to allow you one further period to obtain and provide the information previously requested. Please respond to the tribunal no later than 10 February 2023. 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 separate 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 10 February 2023. If we do not hear from you within this time, the President may decide to reject the application.”

No response was received.

Reasons for Decision

4. 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."

5. '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"*.

6. The application seeks to proceed under Rule 66. In order to rely upon these Grounds the Applicant must have validly terminated the SAT. The commencement date of the tenancy was 23 September 2012 to 23 September 2013. The Notice to Quit states 30 November 2021 as the date by which the Respondent should quit and remove. This was not an "ish" of the tenancy. The tenancy was not validly terminated at its "ish" and continues as a consequence.

7. The Notice to Quit was not in compliance with the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 as amended by Regulation 3 of the First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019.

8. The Section 33 Notice did not to comply with the 6 months period prescribed at the time under the Coronavirus (Scotland) Act 2020 and was missing the date when vacant possession was required.

9. The AT5 was incomplete and the section 11 Notice had been issued under the incorrect legislation.

7. As the tenancy has not been validly terminated, section 33 not complied with and a number of documents incomplete or incorrect, the application missing requested documents and evidence the Tribunal could not grant the order sought. 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

7 March 2023

Legal Member/Chair

Date