



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/20/1357

Re: 7 Hill Court, South Queensferry, EH30 9LR ("the Property")

Parties:

Mrs Mina Hoskins (Applicant)

Mr Andrew Malarky, Mrs Laura Malarky (Respondent)

Mr Stephen Aitchison (Applicant's Representative)

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 65 on 20 March 2020. The grounds for possession/eviction were stated to be Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**). The following documents were enclosed with the application:

- (i) Short Assured Tenancy (**SAT**) commencing 1 August 2017 until terminated by either party giving 1 months' notice;
- (ii) AT6 dated 10 July 2020 specifying the grounds for possession as being Grounds 11 and 12 and that the earliest date for raising proceedings was 11 September 2019;
- (iii) Notice to Quit dated 7 June 2019 and specifying 8 July 2019 as the date to quit.

2. The application was considered by the Tribunal and further information was requested by letter of 25 June 2020. In particular the Applicant was requested to provide the following further information:

- a. *Please provide proof of service of the Notice to Quit and AT 6 documents*
- b. *Please provide legal submissions why the Tribunal should be able to entertain an application based on a Notice to Quit which does not provide the necessary information stated in The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 as amended.*
- c. *Please provide legal submissions how the Notice to Quit was issued to an ish of the tenancy. It appears that the Notice to Quit was issued to 8 July 2019 whereas the tenancy started on 1 August 2017 on a month to month basis*
- d. *The Tribunal cannot accept an application unless it is accompanied by a S 11 Notice to the Local Authority and proof of service of same.*
- e. *You state as the ground of eviction ground 8, however the AT6 document does not refer to ground 8 but only to grounds 11 and 12. Please provide submissions on what basis the Tribunal should be able to consider such an application.*
- f. *Given the above issues identified regarding the Notice to Quit, application and AT 6 document you may wish to obtain legal advice with regard to these queries. (amongst others) comment on the validity of the Notice to Quit as the date specified did not coincide with an ish or end date of the tenancy and the prescribed information had not been included.*

The Applicant was asked to respond by 9 July and warned that the application may be rejected if the further information was not provided.

3. No response was received from the Applicant and the case was again considered by the Tribunal on 10 August 2020.

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 65 using Ground 8 of Schedule 5 to the Act. In order to rely upon these Grounds the Applicant must have validly terminated the SAT. The commencement date of the tenancy was the 1 August and 1 months' notice must be given of termination. The Notice to Quit states 8 July 2019 as the date by which the Respondent should quit and remove - which was patently wrong. The tenancy was not validly terminated at its "ish" and continues as a consequence.

7. The Notice to Quit did not contain the statutory information specified in ***The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 (Regulations)***. Failure to incorporate the prescribed information renders the Notice to Quit invalid.

8. No section 11 Notice as required under the ***Homelessness etc. (Scotland) Act 2003*** was provided to the Tribunal. Section 11 provides:

11 Notice to local authorities of proceedings for possession and enforcement of standard securities

(1)Where a landlord raises proceedings for possession of a dwellinghouse, the landlord must give notice of the raising of the proceedings to the local authority in whose area the dwellinghouse is situated

The Tribunal cannot grant an order for eviction and recovery of possession where no section 11 Notice has been served.

9. The AT6 served by the Applicant did not give notice of Ground 8. Section 19 of the Act provides:

19 Notice of proceedings for possession.

(1)The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—

(a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or

(b) the Tribunal considers it reasonable to dispense with the requirement of such a notice.

(2)The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section;

The Tribunal cannot grant an order for possession for a Ground which has not been notified in the AT6.

Furthermore, the AT6 specifies that the earliest date for raising proceedings was 11 September 2019. Section 19(7) of the Act states:

(7) A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.

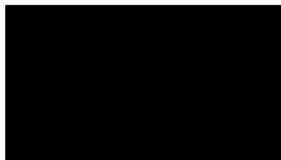
Proceedings were raised before the Tribunal by application received on 20 March 2020. Proceedings were raised more than 6 months after 11 September 2019 and accordingly the AT6 relied upon in this application had ceased to have effect.

In terms of section 19(1) the Tribunal should not entertain proceedings for possession where no AT6 has been served (as is the case here).

10. In light of the above reasons the Tribunal cannot 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

Legal Member/Chair

10 August 2020

Date