

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/20/2458

Re: 3 Caulstran Street, Dumfries, DG2 9FN ("the Property")

Parties

**Mr Jonathan Marshall (Applicant)
Mrs Lisa Cain (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 65 on 26 November 2020. The grounds for possession/eviction were stated to be Ground 11 of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**) and reference was also made to anti-social behaviour and criminal activity. The following documents were enclosed with the application:

- (i) Short Assured Tenancy (**SAT**) commencing 22 August 2016;
- (ii) Screenshots of text messages between the Parties asserted to be Notice to Quit.

2. The application was considered by the Tribunal and further information was requested by letter of 4 December 2020. 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:

Please provide a signed and dated copy of the application. You had indicated you would submit this. This has still not been received. If you have problems signing the form online please sign it on a paper copy and forward the paper copy and at the same time email a photograph of the signed page.

In terms of Rule 65 you are required to produce the tenancy agreement. You have only submitted pages 1-4. Please provide the missing pages

In terms of Rule 65 you must submit a copy of the AT6 notice served on the tenant. This has not been provided. Please provide this now together with the proof of service. If you consider that you wish to ask the Tribunal to dispense with this requirement you would have to make representations confirming this and explain why the Tribunal should consider this to be reasonable. Ultimately this issue may require to be dealt with at a Case Management Discussion should the application otherwise meet the lodging criteria.

In terms of Rule 65 you must submit a copy of the Notice to Quit given to the tenant. You have only submitted a screenshot of a text message which is undated and unsigned and would not constitute a valid Notice to Quit as it does not meet the requirements for such a notice as stated in The Assured Tenancies (Notices to Quit Prescribed Information)(Scotland) Regulations 1988 as amended by The First-tier Tribunal for Scotland Housing and Property Chamber (Incidental Provisions) Regulations 2019 Regulation 3. Please now submit a valid Notice to Quit together with proof of service.

In terms of Rule 65 you must submit a notice given to the local authority by the landlord under S 11 of the Homelessness (Scotland) Act 2003 and proof of service of same. Please provide this now.

The application is made in the name of Jonathan Marshall. The title deeds and landlord registration as well as the tenancy agreement show that this is a joint ownership and that there is a joint landlord. Please either provide confirmation from Michelle Marshall that she has no objection for the application to be raised by Mr. Marshall alone or confirm that the application should be made in the name of both landlords.

The tenancy agreement states as the name of the tenant Lisa McVittie, the application is raised against a Lisa Cain. Please explain the discrepancy.

You state that the respondent has a history of late payments. You have not provided any evidence for this. In terms of Rule 65 an application has to be accompanied by evidence as the applicant has that the possession ground or grounds has been met. Please provide this now. If you are relying on rent payments not being made on time or not in full please provide a rent statement showing date, rent due, rent paid, running total.

You state that the local authority has advised you about antisocial behaviour. Please clarify on which grounds you wish to rely. If this is a ground on which you wish to rely you must again provide evidence for this.

Please reply to this office with the necessary information by 18 December 2020. If we do not hear from you within this time, the President may decide to reject the application. “

3. The Applicant responded by emails of 4 and 9 December 2020 providing some of the information requested (which included an amended application form and copy

letters which purported to be notice to quit). The case was again considered by the Tribunal on 6 January 2021 and it was noted that:

- a. The Notice to Quit provided 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;
- b. No Form AT6 had been provided (as required under section 19 of the ***Housing (Scotland) Act 1988***) nor was proof of service;
- c. No section 11 notice as required by the ***Homelessness (Scotland) Act 2003*** was provided nor proof of service.

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 11 of Schedule 5 to the Act or anti-social behaviour as provided for in the amended application. In order to rely upon these Grounds the Applicant must have validly terminated the SAT. 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.

7. No AT6 had been produced by the Applicant. The Applicant has accordingly failed to provide the Respondent with the statutory period of notice under section 19 of the Act.

The Tribunal cannot grant an order for possession for a Ground which has not been notified and served with appropriate notice in an AT6.

8. No section 11 Notice has been produced. The Tribunal cannot grant an order for possession where the statutory notification has not been made to the local authority.

9. 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.



6 January 2021

Legal Member/Chair

Date