



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.

In respect of application by Mr Robert Sherwood in terms of Rule 65 of the Rules.

Case reference FTS/HPC/EV/22/3154

At Glasgow on the 7 October 2022, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1)(a) and (c) of the Rules.

1. This is an application by Mr Robert Sherwood the owner and landlord of the property at 12 Hillside Avenue Burnbrae Alexandria G83 0BB ‘the property’, for recovery of possession of the property in terms of Rule 65.
2. The application was dated 31 August 2022 and received by the tribunal on 2 September 2022.
3. The application was accompanied by the following:-
 1. AT6 dated 28 January 2022
 2. Notice to leave dated 28 July 2021.
4. The applicant stated that he required to sell the property as his interest only mortgage was due to expire in January 2023.
5. The application was incomplete and the tribunal wrote to the applicant on 2 September 2022 as follows:

The following further information is required from you before your application can proceed to the Chamber President for consideration:

- A copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give.
- A copy of the notice to quit served by the landlord on the tenant.
- a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003(13).

Please reply to this office with the necessary information by 9 September 2022, otherwise the application may be rejected.

6. The applicant responded by sending a portion of the tenancy agreement and a further copy of the notice to leave and AT6. No notice to quit has been provided.
7. There are a number of difficulties with this application which have led me to reject it.
8. Looking at the portion of the tenancy agreement which has been provided, the applicant let his property on a short assured tenancy on 9 March 2011. The term of the agreement is 9 March 2021 until 9 March 2012. There is no provision for the agreement to continue from month to month thereafter. Clause 9 of the agreement provides:

Should the tenant remain in possession of the Property with the consent of the Landlord after the natural expiration of this Agreement, a new tenancy will be created between the Landlord and The Tenant will be subject to all the terms and conditions of this Agreement but will be terminable upon the Landlord giving the Tenant the notice required under the Act.
9. This means that the agreement has continued by tacit relocation since 2011 and the ish date is 9 March. The applicant has not produced a valid notice to quit.
10. It appears that the applicant has erroneously served a notice to leave on the tenant instead of a notice to quit with a valid ish date. A notice to leave only relates to tenancies constituted after 1 December 2017. This tenancy was constituted in 2011 and cannot therefore be a private residential tenancy. The applicant has served a notice to leave dated 28 July 2021 on the ground that he wishes to sell the property. Assuming for the moment that the notice to leave could be read as a notice to quit (which is not accepted) the date on the notice to leave by which the tenant must leave the property is 28 February 2022 which is not the ish date.
11. In the absence of a valid notice to quit an applicant could still rely on the terms of s19 of the Housing (Scotland) Act 1988 ('the Act') and proceed on the basis of the AT6, but there are serious problems with the AT6 here which cannot be overcome.

12. The AT6 is dated 28 January 2022 and states that proceedings will not be raised before 28 July 2022. S19 of the Housing (Scotland) Act 1988 Act ('the Act') provides :

19 Notice of proceedings for possession.

(1) The [E1 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) [E2 the Tribunal] considers it reasonable to dispense with the requirement of such a notice.

(2) The [E3 First-tier Tribunal] shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground [E4 and particulars of it are] specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the [E3 Tribunal] .

(3) A notice under this section is one [E5 in the prescribed form] informing the tenant that—

(a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and

(b) those proceedings will not be raised earlier than the expiry of the period of [E6 two weeks or two months] [E6 28 days, two months, three months or, as the case may be, six months] (whichever is appropriate under subsection (4) [E7 or (4A)] below) from the date of service of the notice.

[E8 (4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—

(a) two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and

(b) in any other case, two weeks.]

[E8 (4) The minimum period to be specified in a notice served before 3 October 2020 as mentioned in subsection (3)(b) is—

(a) two months if the notice specifies only Ground 9 in Part II of Schedule 5 to this Act,

(b) three months if the notice specifies any of the following grounds in Schedule 5 to this Act (whether with or without also specifying the ground referred to in paragraph (a))—

(i) Ground 1 in Part I,

(ii) Ground 15 in Part II,

(c) six months if the notice specifies any of the following grounds in Schedule 5 to this Act (whether with or without other grounds)—

(i) Grounds 2 to 8 in Part I,

(ii) Grounds 10 to 14 in Part II,

(iii) Ground 16 or 17 in Part II.

(4A) The minimum period to be specified in a notice served on or after 3 October 2020 as mentioned in subsection (3)(b) is—

(a) 28 days if the notice specifies only Ground 15 in Part II of Schedule 5 to this Act,

(b) two months if the notice specifies Ground 9 in Part II of Schedule 5 to this Act (whether with or without also specifying the ground referred to in paragraph (a)),

(c) three months if the notice specifies Ground 1 in Part I of Schedule 5 to this Act (whether with or without also specifying either or both of the grounds referred to in paragraphs (a) and (b)),

(d) six months if the notice specifies any of the following grounds in Schedule 5 to this Act (whether with or without other grounds)—

(i) Grounds 2 to 8 in Part I,

(ii) Grounds 10 to 14 in Part II,

(iii) Ground 16 or 17 in Part II.]

(5) The [F9 First-tier Tribunal] may not exercise the power conferred by subsection (1)(b) above if the landlord seeks to recover possession on Ground 8 in Schedule 5 to this Act.

(6) Where a notice under this section relating to a contractual tenancy—

(a) is served during the tenancy; or

(b) is served after the tenancy has been terminated but relates (in whole or in part) to events occurring during the tenancy,

the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.

(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.

13. The ground for eviction given in the AT6 is ground 10. It states 'ground 10 the notice to quit has expired'. Ground 10 of schedule 5 of the Act relates to a tenant giving a notice to quit to the landlord, not the other way around. There has been nothing produced by the applicant to suggest that the tenant has served a notice to quit which has expired.

14. Even if the AT6 was valid, the application would fail as the tenancy agreement does not narrate the grounds of eviction laid out in schedule 5 of the Act. S18(6) of the Act allows the tribunal to grant an order for recovery of

possession where a contract has not been terminated. As there is no notice to quit the contract has not come to an end and s18(6) could apply. In the case of Royal Bank of Scotland-v- Boyle 1999 Hous LR 43 it was established that for an application based on s18(6) to succeed the essential ingredients of the ground relied upon must be referred to in the tenancy agreement. There is nothing in the tenancy agreement lodged which makes any reference the eviction grounds of schedule 5 of the Act.

15. Rule 8(1)(a) of the Rules allows an application to be **rejected** by the Chamber President if '*they consider that an application is vexatious or frivolous*'. "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".

16. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application. There is a fundamental defect with the AT6 and there is no notice to quit.

17. Given the issues with the notice to quit and AT6 in accordance with the overriding objective I am rejecting this application for the foregoing reasons.

NOTE: What you should do now.

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

Lesley Ward

Lesley Anne Ward

Legal Member