



Decision with Statement of Reasons of Joan Devine, 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/19/3963

Re: 9 Railway Cottage, Blair Atholl, Pitlochry, PH18 5SQ ("the Property")

Parties:

Mrs Anne Christina Mankad ("the Applicant")

Lisa Zaczek ("the Respondent")

**Tribunal Member:
Joan Devine (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 First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 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 December 2019. The grounds for possession were stated to be at least 3 months rent was in arrears. Reference was made to ground 8 of the Housing (Scotland) Act 1988 ("the Act"). The following documents were enclosed with the application:
 - (i) Undated Tenancy Agreement in respect of the Property which specified the period of the tenancy as being from 27 August 2017 to 27 February 2018;
 - (ii) AT6 dated 13 November 2019 signed by the Applicant;
 - (iii) Section 11 Notice to Perth and Kinross Council;

- (iv) Section 33 Notice dated 13 November 2019 which stated that the landlord required vacant possession of the Property on 2 December 2019, that the tenancy would reach its termination date as at that date and that the tenant was required to remove from the Property before 2 December 2019;
 - (v) Notice to Quit dated 13 November 2019 stating that the Applicant required possession of the Property on 2 December 2019; and
 - (vi) Title report which noted that title to the Property was held by Pankaj Shashikant Mankad.
2. On 19 December 2019 the application was considered by the Tribunal. The Tribunal noted that title to the Property was not held by the Applicant. The Tribunal therefore questioned the basis on which the Applicant had granted the tenancy agreement. There was no AT5 produced. There was no evidence of service of the Notice to Quit or the AT6. More fundamentally however the Tribunal noted that :
- The tenancy agreement was for the period 27 August 2017 to 27 February 2018. Thereafter it continued by tacit relocation for successive periods of 6 months. The ish for the current 6 month period would be 27 February 2020. The ish specified in the notice to quit did not correspond with that date.
 - The period of notice specified in the Notice to Quit was in any event inadequate.
 - The period of notice specified in the Section 33 notice was 19 days rather than the 2 months required by Section 33 of the Act.
 - In any event, as the tenancy had not reached the ish, a section 33 notice was incompetent as the tenancy had not reached its ish and tacit relocation was operating. Reference is made to section 33(1)(a) and (b).

Reasons for Decision

3. The Tribunal considered the application in terms of Rule 8 of the 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."

4. '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".

5. In this application the Notice to Quit does not contain a termination date that conforms with the ish; the period of notice in the Notice to Quit is inadequate; the period of notice in the Section 33 Notice is inadequate; the Section 33 Notice is in any event incompetent. The Tribunal would not be able to 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 application was not accompanied by evidence of service of the requisite Notices. 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.

J Devine

Legal Member

19 December 2019
Date