



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")

Re: 20 Greenfield Rd, Hamilton, ML3 0NN ("the Property")

Chamber Ref: FTS/HPC/EV/20/2120

Parties

Mr Francis Kerr (Applicant)

Mrs Laura Watson (Respondent)

Queen Bee Properties (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 dismissed 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 under Rule 109 on 6 October 2020.
2. The application was considered by the Tribunal and further information was requested by email of 16 October 2020. The Applicant was asked to:

"Before a decision can be made, we need you to provide us with the following:

1. *The application form appears to specify eviction grounds from the Housing (Scotland) Act 1988. The tenancy is a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016. Please submit a replacement section of the form which refers to the correct grounds. Please note that the Notice to leave only*

refers to ground 11 and 14. You cannot specify grounds in the form which do not have a notice to leave in support of them. 2. There is a joint tenant in the tenancy agreement. The application form does not include this tenant. Please confirm if you wish to amend the application to add this tenant. Please note that if the tenancy is a joint tenancy, an eviction order against only one of the tenants may not be effective. You may wish to take legal advice on this matter. 3. If you wish to add the joint tenant you will require to submit a further notice to leave for that tenant, or a Notice which specifies both tenants. 4. The Notice to leave specifies grounds 11 and 14. You have only given 3 months notice in the Notice to Leave. In terms of the Coronavirus (Scotland) Act 2020, ground 11 requires 6 months notice. The Notice may not be invalid, however it cannot be relied upon until the correct notice period has passed. Please consider the following options –

(a) The application can proceed under ground 14 only. If so, you cannot rely on ground 11 which is breach of tenancy. In any event, if the breach of tenancy relates to non-payment of rent, ground 11 does not apply, or (b) If you wish to rely on both grounds, you can withdraw the application and resubmit same when the additional 3 months have passed, or (c) You can confirm that you are asking the Tribunal to entertain the application even though section 54 (which relates to notice periods) has been breached. Please note that if you chose this option, a decision will not be made at the application stage but when the case calls for a case management discussion. You will require to satisfy the Tribunal that it is reasonable to do this.

5. Please confirm how and when the Notice(s) to leave were given, and provide evidence of this. 6. Please provide a copy of the Section 11 Notice to the Local Authority, together with evidence that it was sent. 7. Please provide evidence of the eviction grounds. If third parties have asked not to be named you can remove their names and addresses from any statements, texts or letters of complaint.

Please reply to this office with the necessary information by 30 October 2020. If we do not hear from you within this time, the President may decide to reject the application.”

3. The Applicant responded by email of 16 October 2020 in the following terms:

“Thank you for getting back to me with regards to the application to the First Tier Tribunal.

The application will be solely going on the grounds of anti-social behaviour. I thought it would be best to let you know since the original notice was served that the tenant had also fallen behind on the rental payments. For the purpose of the application it will be anti-social behaviour only then as this is the main reason for the initial notice being served.

We received phone calls from more than one neighbour, then one of them sent us an email as the others were older and tended not to use emails as a form of contact. The

complaints were about multiple things, one being leaving 2 dogs outside barking all day, then leaving them inside for a full weekend on more than one occasion barking inside, then having parties, a hot tub was purchased and on inspection we could see that there was a new hot tub there. Apparently parties were taking place inside the garden and house, cars pulling up to the property at 2am and 3am in the morning. This had been going on for most weekends before the neighbours finally had enough and came directly to us. More than one warning was given to the tenant about this behaviour not being acceptable. One of the neighbours contacted the owner directly and he wanted notice the notice to be served. It's usually a quiet housing estate, one neighbour was recovering from cancer treatment during all of this.

Since the application has been sent across, we have since then had some progress with the tenant. Basically Lanarkshire Council have stated that they are willing to help to re-home the tenant, however they will only do this when they receive a letter confirming that our application has been granted or a letter of acceptance. If we can get a letter to confirm the application has been accepted by the First Tier Tribunal, this means the tenant will be re-homed with her two children and we can then withdraw the eviction notice application from the First Tier Tribunal. I understand during this time applications will be high, it would be extremely helpful if this could happen. The tenant is very keen to move now and get a fresh start, this is the only thing stopping the tenant from obtaining help.

Since the notice was served the tenant has also lost her job and been placed on Universal Credit, Universal Credit will only cover half of the rent, which then means if the tenant stays on longer she will fall into more debt and rent arrears will occur. This is a stressful situation for the owner and tenant. Hoping to achieve a resolve for both the landlord and tenant during these difficult times.

I would appreciate any help and advice you can offer as this is also the first time we have ever had to submit an application to the First Tier Tribunal requesting an eviction order or tribunal.

I look forward to speaking with you soon.

In the meantime I shall print off what has been attached and reply to this as best I can.

This was a joint tenancy agreement, we were recently notified that her partner had walked out of the property."

4. No further information was received. The application was considered by the Tribunal and the Tribunal wrote by letter of 27 October 2020 requesting further information as follows:

"Before a decision can be made, we need you to provide us with the following:

Your response to the Tribunal's request for further information does not address all of the matters raised. In particular, you have not provided a response to parts 1, 5, 6 and 5 of the letter. The application cannot be accepted until you have provided a

satisfactory response to these points. Furthermore, it appears that the tenancy is still a joint tenancy. Your application and Notice only relate to one of the joint tenants. Please clarify the basis upon which the Tribunal can grant an order against only one of the joint tenants. You may wish to take legal advice on this matter.

Please reply to this office with the necessary information by 10 November 2020. If we do not hear from you within this time, the President may decide to reject the application.”

5. No response was received.

Reasons for Decision

6. 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."

7. '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"*.

8. Rule 109 of the Tribunal Rules requires:

Application for an eviction order

109. Where a landlord makes an application under section 51(1) (for an eviction order) of the 2016 Act, the application must—

(a)state—

(i)the name, address and registration number (if any) of the landlord;

(ii)the name, address and profession of any representative of the landlord;

(iii)the name and address of the tenant; and

(iv)the ground or grounds for eviction;

(b)be accompanied by—

(i)evidence showing that the eviction ground or grounds has been met;

(ii)a copy of the notice to leave given to the tenant as required under section 52(3) of the 2016 Act; and

(iii)a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act; and

(c)be signed and dated by the landlord or a representative of the landlord.

The applicant failed to produce necessary information and evidence to support the application. The application could not proceed.

9. 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

20 November 2020

Legal Member/Chair

Date