



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/20/1598

Re: 19c (T1/1) Cairnie Street, Arbroath, Angus, DD11 3BJ ("the Property")

Parties

Mt Malcolm Watson (Applicant)
Miss Amanda Doyle (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 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 28 July 2020. The grounds for possession/eviction were stated to be 3 months' rent arrears as at the date of service of the notice of proceedings; some rent was unpaid and the tenant had persistently delayed payment; tenant had engaged in anti-social behaviour; tenant had breached obligations under the tenancy. The following documents were enclosed with the application:

- (i) Private Residential Tenancy Agreement (**PRTA**) commencing 17 December 2018;
- (ii) Notice to Leave dated 3 October 2019;
- (iii) Picture evidence.

2. The application was considered by the Tribunal and further information was requested by letter of 24 August 2020. The Applicant was asked to:

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

- 1. Please provide a copy of the whole tenancy agreement.*
- 2. Please confirm how and when the Notice to Leave was given to the Respondent and provide evidence of this. If it was given on 3 October 2019 it appears to be invalid as the date specified in part 4 is incorrect. Furthermore, in terms of Section 55 of the Private Housing (Tenancies) (Scotland) Act 2016 an application to the Tribunal cannot be made more than six months after the date specified in the Notice. Please clarify the basis upon which the Tribunal can entertain the application.*
- 3. Rule 109 requires the Applicant to provide evidence in support of the eviction grounds. Please provide this evidence in relation to all eviction grounds relied upon, if the application is to continue.*
- 4. The application form appears to refer to grounds for possession under the Housing (Scotland) Act 1988 and not eviction grounds under the 2016 Act. Please provide a replacement section of the form with the correct grounds stated.*
- 5. Please provide a copy of the Notice to the Local authority in terms of Section 11 Homelessness etc (Scotland) Act and confirm how and when it was sent.*

Please provide the required information no later than 7 September 2020 otherwise your application may be rejected.”

3. No response was received. The Tribunal wrote to the Applicant again on 14 September 2020 requesting the further information referred to in the earlier letter of 24 August 2020. He was asked to provide the information requested by 25 September 2020.

4. The Applicant responded by email of 22 September as follows:

- “1. Please see attached copy of whole tenancy agreement.*
- 2. I can confirm the Notice to Leave was hand delivered to Amanda on the 3rd Oct 2019. Not too sure how i can evidence this. Do i need to go through the procedure again and do something differently? if so, what?*
- 3. Do you need me to obtain Police reports & relevant case numbers regarding the anti-social behaviour matters they have had to deal with? If not, what specific evidence do you need? More photos of damage to my property? Photos of the drilled material as a result of them changing my locks on the front door? Cigarette ends in the internal stairwell? Financial statements showing lack of payment?*
- 4. I'm not clear on what this point means and would appreciate further clarification. a. The tenant has breached umpteen conditions of the tenancy agreement b. The tenant has not paid her full rent for well over a year, leaving me at a financial loss. c. The tenant has engaged in anti-social behaviour Ultimately, outlining the 3 x reasons above, the net result is, once she leaves my property, i am going to sell it due to the very bad experience with this tenant and I no longer wish to rent my flat.*
- 5. Amanda Doyle used my correspondence, the Notice to Leave, which i issued to her and presented that to the local authority as 'Notice'. a. I have been in correspondence with John Finn at Angus Council (finnjp@angus.gov.uk) and he is awaiting the output/decision of my submission to the First-tier Tribunal for Scotland to support me evicting my tenant so he can re-house her in a council supplied property.”*

Reasons for Decision

5. 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."

6. '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"*.

7. The Applicant had not produced the information requested by the Tribunal on 24 August and 14 September 2020. Section 11 of the **Homelessness etc. (Scotland) Act 2003** provides:

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, unless the landlord—

(a)is the local authority, or

(b)is required to give such notice to the local authority under any other enactment.

The Applicant had not produced confirmation of the service of a section 11 Notice upon the Local Authority. The application could not proceed without that.

8. The Notice to Leave was hand delivered by the Applicant on 3 October 2019. It specified that proceedings would not be raised before 31 October 2019. Proceedings were not raised until 28 July 2020. Section 55 of the **Private Housing (Tenancies) (Scotland) Act 2016 (act)** provides:

55 Restriction on applying 6 months after the notice period expires

(1)A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired.

(2)In subsection (1), “the relevant period” has the meaning given in section 54(2).

(3)The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

The Applicant cannot use the Notice to Leave in support of this application and accordingly no valid Notice to Leave has been served. Section 52(3) of the Act provides:

An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

The Applicant cannot produce a valid Notice to Leave as required. The application cannot proceed as a consequence.

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

8 October 2020

Legal Member/Chair

Date