

Decision with Statement of Reasons of H Forbes, 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/PR/22/1072

Re: 2/2 20 Hastie Street, Glasgow, G3 8AE ("the Property")

Parties:

Miss Suthasinee Kumluang ("the Applicant")

Federica Giacobbe ("the Respondent")

Tribunal Member:

Ms H Forbes (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. An application was received by the Tribunal under Rule 110 on 10th April 2022. The Applicant was seeking a wrongful termination order in terms of section 58 of the Private Housing (Tenancies) (Scotland) Act 2016. The Applicant lodged a tenancy agreement in respect of the Property, email notice to vacate flat, end of tenancy letter, advert to rent the Property, flat offer and extra payment document.
2. The application was considered by the Tribunal and further information was requested by letter dated 29th April 2022 as follows, with a response required by 13th May 2022:

You have submitted a copy of an email from the Respondent. Please advise if a Notice to Leave form was sent with this email and provide a copy of this.

3. By email dated 29th April 2022, the Applicant replied as follows:

Regarding the request of the notice to leave form, I did not receive the form from my landlord. She only sent an email to me and another flat mate asking us to leave within the end of May 2022. I have attached the original email herewith for your consideration

4. The application was considered by the Tribunal and further information was requested by letter dated 20th May 2022 as follows, with a response requested by 3rd June 2022:

You have advised that the landlord did not serve a notice to leave on you. Given this, it may not therefore be competent to accept the application under rule 110.

This is because where a tenant alleges that there has been wrongful termination without an eviction order the relevant section of the Private Housing (Tenancies) (Scotland) Act 2016 is section 58. Section 58 says that it applies where a private residential tenancy has been brought to an end in accordance with section 50. Section 50 deals with terminating by notice to leave and then leaving and it says that a tenancy comes to an end if the tenant has received a notice to leave. Notices to leave are defined in section 62 of the Act. The email from the landlord does not appear to be a notice to leave.

As you did not receive a notice to leave from the landlord, it appears that your application may not be competent.

Please consider this point, and confirm if you agree that the application is not competent. If you disagree and consider it is competent, then please explain in what way you consider that the terms of section 50, 58 and 62 apply to your situation.

If you agree that the application is not competent, you can either withdraw the application, or consider if you are entitled to amend it and make a claim under rule 69 - damages for unlawful eviction. The legal member suggests that you may wish to take legal advice on what action you should now take.

5. By email dated 26th May 2022, the Applicant responded as follows:

1. The letter pointed out to me that "The email from the landlord does not appear to be a notice to leave"

My answer: I received the notice to leave from my landlord via WhatsApp and by Email which I think the latter is more formal and can be used as a letter to leave from my landlord. Information from the website and the Act did not state that it should be a formal form, so, the only email from

my landlord made me understand that she want to use her flat as mentioned in Gov website that “the landlord must give you written notice that they want the property back” I did not understand why the Email cannot be used as the evidence. This email contains the name of my landlord and my full name which obviously showed in the Tenancy contract. The subject of the email stated that “3-month notice to vacate the flat” The body of email stated when she wants it back and her reason. When I received this email, it made me understand that I have to leave although I did not do anything wrong. I have attached the email and the WhatsApp which contains our communication for your consideration. However, the obvious thing that my landlord misled me as she stated that she wants to move in, but after I moved out, she posted for a new tenant for renting the room. Based on your website**, many examples showed that my case should be acceptable as it misleading to the tenant.*

2. I have studied the section 58, 62 and related information of other sections

My answer: When reading these section, does this mean I got a “Wrongful termination without eviction order”. Because I did not do anything wrong, so, should send new application?

6. The application was considered by the Tribunal and further information was requested by letter dated 20th June 2022, as follows, with a response requested by 4th July 2022:

Unfortunately as previously advised to you an application under Rule 111 can only be made if you left the property following service of a notice to leave. Although you have correctly identified some of the requirements in a valid Notice to Leave the format of the Notice itself is prescribed by The Notices and Forms Regulations, regulation 6 and is a pro forma style. In terms of S62(d) of the 2016 Act this format is required to be used. In addition the date by which the tenant is required to leave needs to be set out not just the number of months’ notice given. Neither of these requirements appears met in your case.

You have asked what you should do but the Tribunal is an impartial legal body and cannot give legal advice so we cannot advise you but would recommend you speak to a solicitor or other agency such as Shelter or Citizen’s advice who can give you impartial advice.

With regard to this application can you please confirm if you now wish to withdraw it or if you feel you have a claim under common law or for breach of contract you can ask to amend your claim or lodge a fresh claim under Rule 111 of the Tribunal’s rules but you will have to give details of what you are claiming and on what grounds. Please advise if you wish to withdraw or amend this application within 14 days failing which your application is likely to be rejected as incompetent.

No response was received from the Applicant.

7. A further opportunity was provided to the Applicant to respond to the letter dated 20th June 2022, by 4th July 2022, failing which the application may be rejected. No response was received from the Applicant.
8. The application was considered further on 25th August 2022.

Reasons for Decision

9. 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.

10. '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".*
11. No formal Notice to Leave as prescribed by The Notices and Forms Regulations and required under S62(d) of the 2016 Act was served upon the Applicant, therefore, the tenancy was not brought to an end in accordance with section 50 of the 2016 Act, as required by section 58 of the said Act.
12. 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. It would not be appropriate to accept the application. 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.

H Forbes

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Legal Member/Chair _____

25th August 2022
Date