Housing and Property Chamber
First-tier Tribunal for Scotland

Decision 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/18/2161

Re: Property at 2 Kidsneuk Gardens, Irvine, KA12 8SX ("the Property")

Parties:

Shona Longmuir, 19 Marina Road, Prestwick,KA9 1QZ ("the Applicant")

Samantha Stoddon, 2 Kidsneuk Gardens, Irvine, KA12 8SX ("the Respondent")

1. On 22 January 2019, an application was received from the Applicant. The application was made under Rule 65 of the Chamber Procedural Rules being by a private landlord for possession on termination under an Assured Tenancy. The following documents were enclosed with the application:-

    1. Copy tenancy agreement (final page);
    2. Copy Notice to Quit;
    3. Email from tenant ;
    4. letter from tenant re rent deposit

    The Tribunal by letters dated 31 January 2019 and 21 February requested further documents and the following were submitted,

    5. Part of AT6 Form dated 31 January 2019
    6. Section 11 Form
    7. Section 33 Notice dated 6 September 2018
    8. Notice to Quit dated 8 September 2018
    9. Second AT6 Form dated 6 September 2018

2. The Tenancy Agreement is in the names of the Applicant and the Respondent Samantha Stoddon and also, a Mr Stoddon. The Tenancy Agreement commenced on 23 February 2017. There was no termination date specified in the Tenancy Agreement.

3. The Notice to Quit was dated 8 September 2018 and sought vacant possession by 22 January 2019. I could find no evidence of service of the Notice to Quit.

4. The first AT6 Notice submitted was incomplete, but appeared to seek recovery as the landlord wished to sell the house and repay the mortgage. It was dated 31 January 2019. Part 4 advising when the proceedings would be raised by was blank. The second AT6 lodged was complete in terms of all pages were supplied; it also sought to rely on the fact that the landlord wished to sell the property; it was dated 6 September 2018 and again on 31 January 2019. Part 4 advising when the proceedings would be raised by was blank. There was no evidence of service of either of these documents.

5. A Form 11 was submitted however it was incomplete.

DECISION

6. I have considered the applications 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;
(b) the dispute to which the application relates has been resolved;
(c) they have good reason to believe that it would not be appropriate to accept the application;
(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or
(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(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. After consideration of the application, I consider that the applications should be rejected on the basis that they are frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.

REASONS FOR DECISION

8. "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. 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".* It is that definition which I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived and has no prospect of success.

9. Section 18 of the 1988 Act provides as follows:-

18 Orders for possession.

(1)The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

(2)The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(3)If the First-tier Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsections (3A) and (6) below, the Tribunal shall make an order for possession.

...

(6)The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a)the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9... Ground 10, Ground 15 or Ground 17; and

(b)the terms of the tenancy make provision for it to be brought to an end on the ground in question.

10. Section 16(1) of the 1988 Act provides as follows:-

"16 - Security of tenure

(1) After the termination of a contractual tenancy which was an assured tenancy the person who, immediately before that termination, was the tenant, so long as he retains possession of the house without being entitled to do so under a contractual tenancy shall, subject to section 12 above and sections 18 and 32 to 35 below—

(a) Continue to have the assured tenancy of the house; and

(b) observe and be entitled to the benefits of all the terms and conditions of the original contract of tenancy so far as they are consistent with this Act but excluding any—

(i) which makes provision for the termination of the tenancy by the landlord or the tenant; or

(ii) which makes provision for an increase in rent (including provision whereby the rent for a particular period will or may be greater than that for an earlier period) otherwise than by an amount specified in or fixed by reference to factors specified in that contract or by a percentage there specified, or fixed by reference to factors there specified, of an amount of rent payable under the tenancy,

and references in this Part of this Act to a "statutory assured tenancy" are references to an assured tenancy which a person is continuing to have by virtue of this subsection, subsection (1) of section 31 below, or section 3A of the Rent (Scotland) Act 1984.

(3)Notwithstanding anything in the terms and conditions of tenancy of a house being a statutory assured tenancy, a landlord who obtains an order for possession of the house as against the tenant shall not be required to give him any notice to quit."

11. The first issue before me relates to the fact that the Section 18 (6) provides that "*The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless— (a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any*

of the grounds in Part II of that Schedule, other than Ground 9... Ground 10, Ground 15 or Ground 17; and (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question." The tenancy agreement does not provide that the tenancy can be brought to an end under any of the Grounds in Schedule 5, the tenancy therefore requires to first, have been brought to end at the "*ish date*" by service of a valid Notice to Quit before any order can be granted in this case.

12. To determine the *"ish date*", you need to consider the terms of the Tenancy Agreement. Clause 5 determines the ish date, as it provides that the lease shall commence on 23 February 2017. There is no duration period specified in the Tenancy Agreement and therefore a period of one year's duration is implied. The Tenancy Agreement would therefore continue on a yearly basis thereafter. I consider therefore that the "*ish date*", in this case falls every 23rd of February.

13. The Notice to Quit was dated 8 September 2018 and provides that the tenant requires to give vacant possession by 22 January 2019. The Notice to Quit does not therefore end the tenancy on the "*ish date"* and I consider therefore that the contractual tenancy has not been brought to an end. There was also no proof of service of this document. The Notice to Quit in its present form is not valid and a contractual tenancy still exists.

14. The terms of both AT6 Forms require to be submitted in accordance with the terms of Section 19, they were however both incomplete and lacking essential requirements. Fundamentally, neither sought to rely on any of the Grounds for Possession which are set out in Schedule 5 of the 1988 Act. They also both failed to provide the Respondent with fair notice as to when proceedings would be raised. Further, there was not provided any proof of service of these documents. These Forms were therefore invalid as they did meet the requirements of Section 19.

15. Accordingly, no order for possession could be completely granted by the Tribunal.

16. For the reasons set out above, it seems to me that the application is frivolous as the statutory requirements are not met and the application should therefore be rejected

17. I would also note that there was some dubiety as to who these proceedings should be pursued against, given that the tenancy agreement and notices had been prepared against both joint tenants, yet the application itself only sought eviction against one of those tenants. Further, the copy of the Section 11 Notice did not appear to have been fully completed as required.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:-

An applicant aggrieved by the decision of the Chamber President, or any 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 first seek permission to appeal from the First-Tier Tribunal. That party must seek permission to appeal within 30 days of the date of the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

Melanie Barbour — 11. 3. 19

Legal Member/Chair — **Date**