



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/20/2032

Re: 73 Belleisle Drive, Carrickstone, Cumbernauld, G68 0BW ("the Property")

Parties

**Mr John Kelly (Applicant)
Miss Yvonne McCafferty (Respondent)**

K Property (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 65 on 24 September 2020.
2. The application was considered by the Tribunal and further information was requested by email of 14 October 2020. The Applicant was asked to:

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

1. *Please provide written authorisation from the applicant(s) that you have been instructed to act for them in this matter.*
2. *Your application is made under rule 65 which is eviction from a property under section 18 of the Housing (Scotland) Act 1987; however the papers submitted in support of your application appear to show that you are seeking eviction under section 33 (end of a short assured tenancy); application for recovery of a tenancy under*

section 33 is a rule 66 application. If you are seeking to recover the property under section 33 please provide an amended first page of the application showing that this is a rule 66 application.

3. If you are seeking recovery of possession under section 18 of the 1987 Act then please provide a copy of the AT6 Form which has been served on the tenant together with evidence of service of that notice (and if necessary evidence of the grounds that you are seeking recovery of possession under).

4. Your application also refers to seeking eviction under Ground 10; please note that this ground relates to the situation where the tenant has given notice to quit; if you are relying on ground 10 please provide a copy of the notice to quit which the tenant gave the landlord.

5. The tenancy agreement states that the tenancy's initial term ran from 29 August 2014 until 1 March 2015. Where the tenancy agreement does not state what the subsequent renewal periods of the tenancy are, it is presumed that a tenancy will continue on a yearly basis after the end of the initial term. It appears therefore that the end date of the tenancy term would be every year on the 1st of March.

The notice to quit seeks vacant possession on 1 May 2020. This does not appear to be the end of the term date in terms of the lease submitted.

Please advise why you consider that the notice to quit has terminated the contractual tenancy on 1 May 2020. Please provide evidence which this date if the "ish" (end) date.

6. It is noted that the title deeds for the property show that it is jointly owned by John Kelly and Marijana Kelly; please either amend the application into the joint names of both owners; or provide written authority from Marijana Kelly that she is aware of and consents to these proceedings being raised in the same name of John Kelly.

Please reply to this office with the necessary information by 28 October 2020. If we do not hear from you within this time, the President may decide to reject the application."

3. Some information was received. The application was considered again by the Tribunal and the Tribunal wrote by letter of 18 November 2020 requesting further information as follows:

"You confirmed that you wish to amend the Application to proceed in terms of Rule 66 and to seek possession on the expiry of a short assured tenancy. However, you have not responded to the following request for further information:

"The tenancy agreement states that the tenancy's initial term ran from 29 August 2014 until 1 March 2015. Where the tenancy agreement does not state what the subsequent renewal periods of the tenancy are, it is presumed that a tenancy will continue on a yearly basis after the end of the initial term. It appears therefore that the end date of the tenancy term would be every year on the 1st of March.

The notice to quit seeks vacant possession on 1 May 2020. This does not appear to be the end of the term date in terms of the lease submitted.

Please advise why you consider that the notice to quit has terminated the contractual tenancy on 1 May 2020. Please provide evidence which this date is the “ish” (end) date.”

Please provide a response no later than 2 December 2020. The tribunal, as a neutral judicial body, cannot provide advice on your Application. You may wish to seek legal advice before responding to the tribunal’s request. If you do not provide a response your Application for eviction under Rule 66 may be refused.”

4. No response was received. The Tribunal again wrote by letter of 15 December 2020 in the following terms:

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

Please provide the information requested in the Tribunal’s letter to you of 18 November 2020.

Please reply to this office with the necessary information by 29 December 2020. If we do not hear from you within this time, the President may decide to reject the application.”

No response was received.

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. In order for the application to proceed the Applicant must establish that the assured tenancy has been terminated by the notice to quit. It does not appear that the notice to quit has terminated the tenancy at its ish. The tenancy accordingly continues and the Tribunal cannot grant an order for recovery of possession and eviction as sought.

8. 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
Legal Member/Chair

15 January 2021

Date