



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/20/2241

Re: 31 Mosscastle Road, Craigend, Glasgow, G33 5PY ("the Property")

Parties

Mr Dale Huges (Applicant)
Miss Lauren O'Connor (Respondent)

1-2-Let (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 23 October 2020. The grounds for possession/eviction were stated to be Ground 12. The following document was enclosed with the application:

- (i) Notice to Leave dated 13 March 2020 which specified 13 April 2020 as the earliest date proceedings could be commenced.

2. The application was considered by the Tribunal and further information was requested by letter of 26 November 2020. The Applicant was asked to provide the following further information:

- The date specified in the Notice to leave is 13 April 2020. The application was submitted to the Tribunal on 23 October 2020. Section 55 of the Private

Housing Tenancies (Scotland) Act 2016 states that a landlord may not make an application to the Tribunal for an eviction order using a copy of notice to leave more than 6 months after the day on which the relevant period in relation to that notice expired. Please explain the basis upon which the Tribunal can consider the application.

3. The Applicant responded by email of 26 November 2020 in the following terms:

"With regards to the date of submission, due to Covid we were running with minimal staff and this caused us to be delayed in sending the application over, I was assuming due to the impact this has had that there would be extensions and flexibility granted on applications? If this is not the case then we will have no option but to withdraw the application for eviction and reserve another 6months notice to the tenant, the tenant has clearly stated they will not move without a first tier tribunal order as they need this to get housing from the council. If you can please advise if this is acceptable?"

Reasons for Decision

4. 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."

5. '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".*

6. Section 55 of the 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).

The notice period specified in Notice to Leave which had been produced with the application had expired prior to the lodging of the application. Section 52 of the Act provides:

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(a)subsection (3), or

(3) 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.

In terms of section 52(2) the Tribunal could not entertain the application.

Right of Appeal

9 December 2020

Date _____