



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/21/0235

Re: 143D Brownside Road, Cambuslang, Glasgow, G72 8AH ("the Property")

Parties

**Ms Josephine Main (Applicant)
Ms Theresa Craig (Respondent)**

Cartys Solicitor (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 rejected 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 2 February 2021. The grounds for possession/eviction were stated to be rent arrears under Ground 8 of Schedule 5 to the **Housing (Scotland) Act 1988 (Act)**. The following documents were enclosed with the application:

- (i) SAT commencing 1 May 2014 for a period of 12 months;
- (ii) Notice to Quit dated 23 July 2020 which specified 23 January 2021 as the date to quit;
- (iii) AT6 dated 23 July 2020 specifying Ground 8;
- (iv) Section 11 Notice to local authority.

2. The application was considered by the Tribunal and further information was requested by letter of 10 March 2021 as follows:

“

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

- With regard to your application for rent arrears under CV/21/236 we note that you have still to send us a copy of the signed tenancy agreement if available and a clear rent statement showing the rent due, rent paid and running balance since arrears started. We await receipt of those to allow this application to proceed.*
- With regard to the application for eviction under EV/21/ 2035. We note what you say about the landlord. Given there that the property is jointly owned along with Mr Jason Main please let us have a written consent from Mr Main to the renting out of the property and raising of these actions.*
- With regard to the AT6 we note that 6 months notice has been given (subject to evidence showing it was served for which see below) however the rules regarding serving a Notice to Quit have not changed and this still requires to be served on an ish or termination date of the lease if it is to be valid and terminate the contractual tenancy. If the contractual assured tenancy is not terminated then this means you can only rely on an AT6 notice if the lease itself narrates the grounds of eviction and the Applicant is relying on S18(6) of the Housing Scotland Act 1988. S18(6) states*

“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 terms of the tenancy only appear to list grounds 1 and 2 and not ground 8 of Schedule 5 of the 1988 Act from the copy lease lodged with the application. Please provide submissions why you believe this application is valid if there is not a valid Notice to Quit (or provide submissions as to why you believe the Notice to Quit is valid) and the terms of the tenancy does not make provision for it to be brought to an end on the ground you are seeking to rely on?

Please advise if you will be able to produce evidence of service of the AT6 form and Notice to Quit on the Respondent or whether you will need to lead evidence of such service if the application is accepted?

Please provide evidence of service or receipt of the S11 notice.

Please reply to this office with the necessary information by 24 March 2021. If we do not hear from you within this time, the President may decide to reject the application.”

3. The Applicant responded on 6 May 2021 informing the Tribunal:

“We refer to the above and to previous correspondence. We are now in a position to provide a full response to your letter dated 10th March 2021.

1. We note there is not a signed copy of the tenancy agreement. The tenant has been residing at the property since 1st May 2014 and matters have been dealt with in terms of the agreement previously provided. We have also previously provided our client’s rent reconciliation showing the amounts now due and that previous rent had been paid.

2. The title to the property is in the joint names of Josephine Main and her estranged husband Jason McTaggart Main. By order of the English High Court of Justice Queen’s Bench Division Administrative Court, an order was granted appointing an Enforcement Receiver on 3rd December 2013 over Mr. Main’s assets. Mrs. Main has been in correspondence with the Receiver’s Scottish agents to transfer the property into her sole name.

3. We believe this application is valid as a Notice to Quit was served giving the tenant 6 months to evacuate the property. The tenant has not done so and over a year of rent remains unpaid. Mrs. Main is entitled to regain possession of the property and have the sums due to her repaid by the tenant.

4. We will require to lead evidence of service of the AT6 form and Notice to Quit if the application is accepted. The solicitor who dealt with matters at the time is arranging to sign an affidavit speaking to this, and we will provide this once we have received it.

5. We enclose correspondence from South Lanarkshire Council confirming the S11 Notice was received and the tenant has been advised of same.”

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. The application seeks to proceed under Rule 65 and Ground 8 of Schedule 5 of the Act. In order to do so the tenancy must have been validly terminated at its ish. The tenancy was for a period of 12 months from 1 May 2014. It renewed each year for a further 12 month period by tacit relocation. The Notice to Quit does not coincide with the ish date of the tenancy and the tenancy does not allow for its termination on the basis of Ground 8.

The tenancy has not been validly terminated and continues. As the tenancy has not been terminated and there is no provision within the tenancy to allow its termination on the basis of Ground 8 the Tribunal cannot grant the order sought.

7. In light of the above reasons the Tribunal cannot grant the order sought. 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

17 May 2021

Legal Member/Chair

Date