



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/19/0611

Re: Property at 126A High Street, Grantown on Spey, PH26 3EN (“the Property”)

Parties:

The Reidhaven Estate, Seafield Estate Office, Cathay House, York Place, Cullen, AB56 4UW (“the Applicant”)

Michael Golledge, 126A High Street, Grantown on Spey, PH26 3EN (“the Respondents”)

1. On 18 January 2019, an application was received from the Applicant. The application was made under Rule 66 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under a Short Assured Tenancy. The following documents were enclosed with the application:-
 - (i) Tenancy Agreement;
 - (ii) Form AT5 ;
 - (iii) Notice to Quit;
 - (iv) Section 33 Notice; and
 - (v) Certificate of Posting and Track and Trace

2. The Tenancy Agreement is in the name of the parties. The Tenancy Agreement was signed on 25 January 2016; and the AT5 Form was signed 25 January. The Tenancy Agreement provides at Clause 4 that the tenancy was for an initial period of 12 months and that it commenced on 1 February 2016 until 31 January 2017. The Tenancy Agreement also provides that after the initial period the tenancy will continue month to month basis thereafter “commencing on 1st February 2017 and terminating on 1st March 2017” and either party requires to give not less than two months’ written notice to the other party to terminate the tenancy.

3. The Notice to Quit was dated 1 November 2018 and addressed to the Respondent. The Notice to Quit seeks vacant possession of the property by 2 February 2019. The Section 33 (1)(d) Notice was dated 1 November 2018 and is addressed to the Respondent and provides that the landlord requires possession of the property on 2 February 2018. A recorded delivery receipt was submitted as proof of postage.
4. There was no Section 11 Notice submitted as the Applicant indicated that the Respondent had now abandoned the property.

DECISION

5. I have considered the application 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.”

6. After consideration of the application, I consider 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.

REASONS FOR DECISION

7. "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.

8. Section 33 of the 1988 Act provides as follows:-

33 - Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First –Tier Tribunal shall make an order for possession of the house if satisfied that—

(a) that the short assured tenancy has reached its ish;

(b) that tacit relocation is not operating;

(c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

9. The issue before me is whether recovery of possession of the property under Section 33 of the Housing (Scotland) Act 1988 Act is competent. To recover possession of a short assured tenancy under Section 33 of the 1988 Act, the tribunal must be satisfied that the requirements of this section are met. The Tenancy Agreement provides that tenancy commenced on 1 February 2016, that the tenancy was for a period of 12 months, and

that it could be extended on a monthly basis thereafter specifically stating that "*the tenancy shall continue after the Date of Expiry on a month to month basis commencing on 1st February 2017 and terminating on 1st March 2017*". The "ish date" or "end date" in this case therefore appears to me to fall on the 1st of every month. The Notice to Quit requires to terminate the contractual tenancy on the ish date. The Notice to Quit served in this case has sought vacant possession on 2 February 2019. 2 February 2019 is not the ish date in this case and therefore the terms of Section 33 have not been met. The short assured tenancy has not reached its ish and a contractual tenancy is for the time being in existence.

10. An order for recovery of possession could not therefore be competently made by the First-Tier Tribunal.
11. 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.
12. I would also note that I consider that that the terms of section 19A of the Housing (Scotland) Act 1988 require to be complied with where a landlord raises proceedings for possession of a house let on an assured tenancy, such as in this case. I do not consider that the terms of that section can be disapplied by the landlord where they claim the Applicant has left the property, but they are still nonetheless seeking an order for possession of the property.

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

Legal Member/Chair

11.3.19

Date