



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/21/0270

Re: Property at 6 Dean Road G/L, Kilmarnock, KA3 1RP (Property)

Parties

Mr Alan Tickner (Applicant)

Miss Rebekah Lennon, Mr Roy Clark (Respondent)

1. On 4 February 2021 an application was received from the Applicant. The application was made under Rule 66 of the Tribunal’s 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) Section 33 Notice; and
 - (iv) Notice to Quit.

2. The Tenancy Agreement was in the name of the Applicant and the second Respondent. There was an AT5 Form attached. The Tenancy Agreement had a section defining “term” however it had not been completed. It was unclear therefore when the tenancy agreement commenced. It was also unclear what the initial term of the tenancy agreement was. The agreement provided that the first payment of rent was due on 14 April 2014 and monthly thereafter. The notice to quit was dated 4 February 2021 and advised the tenant to quit the property on 6 August 2021. A Section 33 Notice dated 4 February 2021 and advised the tenant to quit the property on 6 August 2021.

DECISION

3. 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.”

4. 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

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. 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.

6. 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 may make an order for possession of the house if satisfied that—

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

(b) That tacit relocation is not operating; ...

(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. And

(e) that it is reasonable to make an order for possession.

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

... six months.”

7. The application was made under rule 66 of the Procedural Rules “*application for possession upon termination of a short assured tenancy*”. The rules narrate that any application requires to be accompanied by a notice under section 33 of the Housing (Scotland) Act 1988; and a Notice to Quit served by the landlord on the tenant. While these documents appear to have been served on the Respondents and have been submitted by the Applicant, the notice periods in the notice to quit and section 33 notice have not yet expired and will not expire until 6 August 2021. The application is therefore premature.

8. 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. In this case the statutory requirements have not yet been met, as the notice periods in the notice to quit and section 33 notice have not expired. For the reasons set out above, the statutory requirements have not been met, and it seems to me that therefore the application is frivolous and should be rejected.

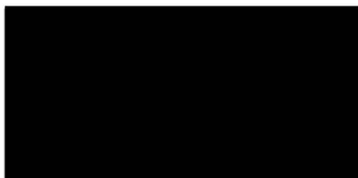
9. I would also observe that I came to no conclusion on the validity of other aspects of the application; having said that had the application been allowed to progress, the applicant would have had to address the tribunal on the following matters:- that the tenancy agreement only appears to have one tenant Roy Clark and it was not therefore clear why two respondents were referred to in the application; the “term” details in the tenancy agreement were blank, and evidence would be required to show the term of the lease (this issue would be relevant to the ish date in the notice to quit); the notice to quit requires to be served terminating the tenancy on the correct end date (or ish date) and evidence would need to be provided to explain when the end date in the lease is and why it was considered to be 6 August; evidence of service of the notice to quit and section 33 notice would need to be provided; and a section 11 notice served on the local authority together with evidence of service of that notice would need to be submitted.

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.

16/02/2021

Legal Member/Chair

Date