Housing and Property Chamber
First-tier Tribunal for Scotland

Decision Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")

Case reference FTS/HPC/EV/21/2446

Parties

Mrs Margaret Roy (Applicant)

Mrs Catrina Wilson (Respondent)

Barton & Hendry Solicitors (Applicant's Representative)

17D Tarbolton Road, Cumbernauld, G67 2AJ (House)

1. On 11 October 2021 an application was received from the Applicant. The application was made under Rule 65 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under an ssured Tenancy. The following documents were enclosed with the application:-

   (i) Tenancy Agreement;
   (ii) AT5
   (iii) Notice to Quit;
   (iv) Section 33 Notice;
   (v) Notice to Local Authority section 11 Notice;

2. The Tenancy Agreement was in the name of the Applicant and the Respondent. The Tenancy Agreement states that tenancy shall start on 28 October 2016 until 27 April 2017. It further provided that the lease would continue for a further 6 months unless the tenant provides written notice that they would "*like to go month to month*". In terms of the tenancy agreement the duration of the tenancy appears to be 6 monthly, unless the tenant has

asked for a monthly term. There was no information provided to clarify if a monthly term had been requested.

3. The Notice to Quit was dated 6 November 2020 and addressed to the Respondents. The Notice to Quit seeks vacant possession as at 6 May 2021. There was a section 33 notice submitted. There was no AT6 Notice submitted.

DECISION

4. 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."

5. 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

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. 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.

7. The first point I would make is that this application has now been in the sift stage for a number of months, and there have been a number of further information requests and as at 20 June 2022, there is still information outstanding and for that reason alone it may have been appropriate and competent to reject the application.

8. Given however the history of the case and the fact that the agents have, in the main, been responding to the further information requests I have looked at the information outstanding to ascertain if the application as it stood had the potential to be competent.

9. I would advise that although the application has been brought under rule 65 (eviction from an assured tenancy under section 18 of the Housing (Scotland) Act 1988), it appears fairly clear, from the information submitted (ie a copy of the AT5 Notice and section 33 notice have been submitted) and the fact that no AT6 notice has been submitted, that in fact the applicant seeks eviction under rule 66 of the tribunal rules, namely eviction of a short assured tenancy in terms of section 33 of the Housing (Scotland) Act 1988.

10. Section 33 of the 1988 Act as amended 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 ish;

(b) that tacit relocation is not operating;

(c) … 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

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

11. I consider that the issue before me is whether recovery of possession of the property under Section 33 of the 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.

12. In this application the tenancy was for an initial period of 6 months from 28 October 2016 until 27 April 2017. It states that it will continue for a further 6 months unless the tenant provides written notice that they would "*like to go month to month*". At its very shortest, if the tenant has asked to move to a monhtly term, the "ish date" would therefore fall on the 27^{h} of each month. If the tenant never asked move to a monthly term, then the term is 6 monthly and will fall on either 27th April or 27th October of each year.

13. The "ish date" (or end date) of the contractual tenancy is not therefore 6 May 2021. The Notice to Quit served in this case stated that the Tenancy Agreement would terminate on 6 May 2021, this is not the ish date. The Notice to Quit does not therefore end the tenancy on the ish date; and tacit relocation is still operating.

14. Accordingly, in relation to the failure to end the tenancy on the ish date the requirements of Section 33 have not been met and an order for recovery of possession could not therefore be competently made by the First-Tier Tribunal.

15. For the reasons set out above, it seems to me that the application is frivolous as the statutory requirements are not met.

16. I would point out that even if the application had in fact sought eviction under rule 65, and if a valid AT6 notice had accompanied the application, the application would still have required a valid notice to quit to have been served. I would have therefore rejected such an application too.

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

27 June 2022

Legal Member/Chair **Date**