



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/20/0777

Re: Property at 17 Bankton Park West, Murieston, Livingston, West Lothian (“the Property”)

Parties:

Mr Derek Hall, 48 Rosemount Drive, West Lothian (“the Applicant”)

Mr Stuart Johnston, 17 Bankton Park West, Murieston, Livingston, West Lothian (“the Respondent”)

1. On 3 March 2020 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;
 - (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 was signed and dated 18 July 2015. The tenancy agreement states that tenancy shall start on 1 August 2015. In terms of the tenancy agreement the duration of the tenancy (or Term) is stated as being for “6 months beginning on 1 August 2015”.
3. The notice to quit was dated 1 March 2020 and addressed to the respondent. The notice to quit seeks vacant possession. No date is however provided in the notice to quit as to

when vacant possession is required. Further, the notice to quit also does not set out which property it refers to.

4. The Section 33 (1) (d) Notice was dated 29 December 2019 and addressed to the respondent and provides that the landlord requires possession of the property on 1 March 2020.
5. There were no certificates of service provided for either the notice to quit or the section 33 notice.

DECISION

6. 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.”

7. 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

8. “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.

9. 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 end;

(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.

10. 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.

11. In this application the term of the tenancy was for a period of 6 months from 1 August 2015. The tenancy agreement was silent as to what term it would continue on after the

initial 6 term had ended. Given that the tenancy agreement was silent on this matter, the tenancy agreement continued on same term as the initial term, namely 6 monthly. The “ish date” (end date) therefore falls every 6 month from the initial date of 1 August 2015.

12. The notice to quit served in this case did not provide a date when the tenancy agreement would terminate (there was no ish date set out in the notice). I consider that the notice to quit required to contain that information. It is not therefore clear from the notice to quit, when the applicant considered the ish date to be, he emailed the tribunal office on 1 July 2020 advising that “...*the ish date is the 01/03/2020 as this is the day after the 2 month notice period*”.
13. For the reasons set out in paragraph 11 above however, 1 March 2020 is not an ish date for this tenancy. Even if I were to accept that the notice to quit was competently drafted and contained all necessary information, including that the tenancy terminated on 1 March 2020, the 1 March 2020 is not an ish date. The notice to quit does not therefore end the contractual tenancy on the ish date. The tenancy has not therefore reached its ish and a contractual tenancy is for the time being still in existence.
14. Accordingly, in relation to the failure to end the tenancy on the ish date the requirements of Section 33 (1) (a) 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.

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

9 July 2020

Legal Member/Chair

Date