



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/22/3448

Re: 12 Oak Lodge Cottage, Inveresk Road, Inveresk, EH21 7TE ("the Property")

Parties

Mr Paul Neish (Applicant)

Mrs Nadine Eve Imlay, Mrs Joyce Drummond Stevens Imlay (Respondent)

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 dismissed 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 109 on 20 September 2022. The grounds for possession/eviction were stated to be Ground 11 (Breach of tenancy agreement). The following document (in so far as relevant) was enclosed with the application:

(i) Notice to Leave dated 5 June 2022.

2. The application was considered by the Tribunal. The Tribunal noted from the Notice to Leave gave notice under Ground 11 and was signed 5 June 2022. It gave notice that proceedings for an eviction order would not be made before 5 July 2022.

The Tribunal by letter of 2 December 2022 requested the Applicant to provide the following further information:

Before a decision can be made, we need you to provide us with the following: • We refer to the letter issued by the Tribunal on 20 October 2022 and note your response by email on 1 and 15 November. • The notice to leave shows the ground relied upon as ground 11 – You have breached a term(s) of your tenancy agreement. Ground 11 cannot be established if it relates to rent arrears alone. Please provide details of which term of the tenancy has been breached and provide evidence of that. Alternatively, please advise whether you wish to withdraw the present application and serve a new Notice to Leave on the basis of ground 12. If you do wish to proceed on the basis of rent arrears, the Tribunal requires a rent statement showing rent due, rent paid and a running total of rent arrears. Please reply to this office with the necessary information by 16 December 2022. If we do not hear from you within this time, the President may decide to reject the application

3. The Applicant responded but did not address the point regarding Ground 11 being relied upon by the Applicant where the alleged breach was rent arrears.

The Tribunal wrote again to the Applicant by email of 5 January 2023 in the following terms:

You have not responded fully to the points made in our letter of 2nd December 2022. You have served Notice to Leave on the ground that there has been a breach of the tenancy agreement, referring to two months' rent outstanding. The legislation specifically removes rent arrears from this ground of eviction. You now appear to be seeking to introduce another breach related to the condition of the property but you have given no notice of that to the Respondents at the time of serving the Notice to Leave, nor have you lodged any evidence of this breach. It is very unlikely that your application would succeed in these circumstances and you would be advised to withdraw the application and serve a further valid Notice to Leave, making another application when the relevant notice period has expired.' Please reply to this office with the necessary information by 19 January 2023. If we do not hear from you within this time, the President may decide to reject the application.

4. The Applicant responded by email of 6 January 2023 in the following terms:

I would like the eviction to proceed and here are my reason as a breach of rent agreement. 25.03.22 payment £1400 this was the last full payment 25.04.22 No payment 25.05.22 No payment 27.06.22 payment £2049.31 East Lothian Council 11.07.22 payment £ 370.36 East Lothian Council 29.07.22 payment £ 700.00 Nadine Imlah 08.08.22 payment £ 646.16 East Lothian Council 05.09.22 payment £ 646.16 East Lothian Council 16.09.22 payment £ 41.58 East Lothian Council 27.09.22 payment £690.00 East Lothian Council The total rent should be £9800.00 Total paid by tenant £2100.00 Total paid by East Lothian Council £4443.57 Shortfall in rent £3256.43 Joyce Imlah has now been moved to sheltered accommodation. Nadine Imlah is now in the property on her own waiting for the eviction so she can be put on East Lothian Council emergency housing list. The councils last payment will be in March 23. The rent payments from East Lothian Council will drop to £690.00 per month. As for the complaint about the mess of the property it was the plumber who fixed the boiler brought it to my attention and I will have to deal with that when the property is empty. I would like this to carry on with the process as it has been over 7 months I have been dealing with this stressful and financial nightmare. I believe that £3256.43 non payment does breach the agreement that was signed by both parties and hopefully the eviction process will see this as well

Reasons for Decision

5. 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."

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. 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"*.

7. Ground 11 of Schedule 3 of the Act provides:

Breach of tenancy agreement

11(1)It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

(2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a)the tenant has failed to comply with a term of the tenancy, and

(b)the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

(3)The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.

The Ground of eviction relied upon specifically excludes any term under which the tenant is required to pay rent. Arrears of rent cannot constitute the Ground relied upon by the Applicant. Accordingly the Tribunal could not grant the application.

8. The Tribunal further noted that no section 11 Notice had been produced by the Applicant. There was no evidence of service of the section 11 notice on the local authority or of the Notice to Leave on the Respondent. The Tribunal could not grant the application without such information.

9. 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.

A Strain

2 February 2023

Legal Member/Chair

Date