



Decision with Statement of Reasons of Helen Forbes, 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/20/0048

Re: 27B North Bridge Street, Airdrie, North Lanarkshire, ML6 6NL ("the Property")

Parties:

Mr Lendrick Gillies ("the Applicant")

Mr Arran Ponton ("the Applicant's representative")

Mr Richard Thomson ("the Respondent")

Tribunal Member:

Helen Forbes (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 9th January 2020. The grounds for possession/eviction were stated to be Grounds 11 and 12. The following documents were enclosed with the application:
 - (i) Section 11 Notice;
 - (ii) Rent statement;
 - (iii) First page of a Notice to Leave.

2. The application was considered by the Tribunal and further information was requested by letter dated 10th January 2020. The Applicant's representative was asked to:

- (a) Provide proof of service of the Notice to Leave;
- (b) Provide proof of service of the Section 11 Notice

The Applicant's representative was given until 17th January 2020 to respond, failing which the application may be rejected.

3. The Applicant's representative responded by email on 10th January 2020 enclosing Sheriff Officers' Certificates of Service of the Notice to Leave on the Respondent and another tenant; and email notification of the Section 11 Notice on the Local Authority.
4. Further information was requested of the Applicant's representative by letter dated 16th January 2020 as follows:

- (a) Provide a complete copy of the Notice to Leave;
- (b) Provide a copy of the tenancy agreement between the parties.

The Applicant's representative was given until 31st January 2020 to respond, failing which the application may be rejected.

5. The Applicant's representative responded by email dated 16th January 2020 enclosing the requested information.
6. Further information was requested of the Applicant's representative by letter dated 21st January 2020 as follows:

- (a) It is noted from the tenancy agreement and Notice to Leave that there are joint tenants but the application has only been brought against one tenant. Please confirm if you wish to amend the application to include the joint tenant;
- (b) It is noted that the application has been brought in the name of Mr Lendrick Gillies but the registered proprietor in terms of the Land Certificate is Pauline Winifred Gillies. Please provide your comments in this regard;
- (c) Please provide written authority from the Applicant that you are authorised to act on behalf of the Applicant in respect of this application to the Tribunal.

The Applicant's representative was given until 4th February 2020 to respond, failing which the application may be rejected.

No response was received from the Applicant's representative.

7. The Tribunal considered the application on 10 March 2020.

Reasons for Decision

8. The Tribunal considered the application in terms of Rule 8 of the Chamber Procedural Rules. Rule 8 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."

9. '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"*.
10. The Applicant's representative has not provided the Tribunal with written authority to indicate that he is authorised to act on behalf of the Applicant. The Applicant's representative has not clarified whether the Applicant has title to proceed with the application. The Applicant's representative has not clarified the situation in relation to the joint tenants. In the absence of the information requested, the Tribunal is unable to consider the application further.
11. 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.