



Decision with Statement of Reasons of H 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/22/2763

Re: 44 Milton Street, Dundee, DD3 6QQ ("the Property")

Parties:

Jacqueline Ritchie ("the Applicant")

Stephanie Wilson ("the Respondent")

Tribunal Member:

Ms H 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. An application was received by the Tribunal under Rule 66 on 8th August 2022. The Applicant was seeking an order for possession. The Applicant's representative lodged a short assured tenancy agreement in respect of the Property, Form AT5, a Notice to Quit and section 33 notice dated 25th January 2022, proof of service, proof of intent to sell the Property, and section 11 notice with proof of service.
2. The application was considered by a legal member of the Tribunal and further information was requested by letter dated 7th September 2022, with a response required by 21st September 2022, as follows:
 1. Please clarify the position regarding the joint tenant named on the tenancy agreement and AT5. She does not appear to have signed either document. However, if the tenancy is a joint tenancy the application must

be amended to include her, contact details must be provided and you must provide evidence of service of the notices on her.

2. The owner of the property appears to be the Trustees of PAR Residential Investments 11 LP. The landlord named on the tenancy is PAR Investments Ltd. Please confirm if you wish to amend the application and confirm the correct name and address of the Applicant.

3. By email dated 14th September 2022, the Applicant representative replied as follows:

• The property was sold during this tenancy by Par Residential Investments 11 LP to Jacqueline Ritchie in May 2018 and the tenant was fully aware that it was a new Landlord but continued on the same lease agreement. Can you let me know what information you require regarding this please.

• There is no joint tenant here. Miss Stephanie Wilson is the sole tenant. Our lease agreement may have had a section to fill in if there were more than one tenant but only one in this instance. Please let me know what other information is required.

4. The application was considered by a legal member of the Tribunal and further information was requested by letter dated 13th October 2022 with a response requested by 27th October 2022, as follows:

1. Please provide your comments on the validity of the Notice to Quit.
No date has been specified.

5. By email dated 27th October 2022, the Applicant representative responded as follows:

I can advise that the missing date on the notice to quit was a genuine administration error that took place within our software system.

I can advise that as per execution confirmation from the sheriff officer attached the notice to quit and section 33 were served as a 2 page document with the 2nd page clearly showing the date. The tenant also received our internal paperwork advising of check out date as well as being informed via telephone prior to this being served to ensure that the tenant was fully aware of the process – all of which are attached above.

The tenant requires this eviction to take place to allow her and her family to be rehoused as cannot be done prior to receiving this notice therefore I would ask for this to continue to ensure the tenant and owners receive the desired outcome which is all of the same thing.

6. The application was considered further on 21st November 2022.

Reasons for Decision

7. 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.

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. 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"*.
9. The application cannot proceed as the Notice to Quit does not appear to be valid. A Notice to Quit must specify the date on which it is to take effect, being an ish date of the tenancy. It is not sufficient to include the date on the section 33 notice without including it on the Notice to Quit.
10. 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. It would not be appropriate to accept the application. 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.

Helen Forbes

Legal Member/Chair

21st November 2022

Date