



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/22/0734

Re: 56 Paisley Road, Barrhead, G78 1NN ("the Property")

Parties:

Ronald Flood ("the Applicant")

Lisa Mcsporrان ("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. The application was received by the Tribunal under Rule 66 on 10th March 2022.
2. The Applicant has provided two copy short assured tenancy agreements between the parties, (1) commencing on 1st October 2017 and ending on 30th September 2018, and (2) commencing on 1st October 2019 and ending on 30th September 2020, copy Notice to Quit dated 8th September 2021 and requiring the Respondent to quit by 1st March 2022, and copy notice to local authority, copy section 33 notice dated 8th September 2021 and requiring vacant possession at 30th November 2021, and copy Form AT6 dated 8th September 2021 stating that proceedings would not be raised before 30th November 2021
3. The application was considered by the Tribunal and further information was requested by letter dated 31st March 2022, as follows:

1. The tenancy agreement is not signed and it is undated. Please provide a copy of the signed agreement.
2. Please provide the AT5.
3. Please provide proof of service of the notice to quit.
4. Please provide your submission as to the validity of the notice to quit given it does not tie in with the ish date and it does not appear that the correct period of notice was given.
5. Please advise as to why you are not on the Register of Landlords.
6. Please provide evidence that you have resubmitted the s11 notice as the one lodged is not complete.
7. Please provide the s33 notice and proof of service of the notice.

The Applicant was given until 14th April 2022 to respond, failing which the application may be rejected.

4. No response was received. By letter dated 4th May 2022, the Applicant was given a further period to 18th May to provide the information.
5. By email dated 18th May 2022, the Applicant stated that the information request had been sent to the wrong email address and provided another email address.
6. By email dated 19th May 2022 the Applicant provided two copy short assured tenancy agreements (1) commencing on 1st October 2017 and ending on 30th September 2018, and (2) commencing on 1st October 2019 and ending on 30th September 2020.
7. The application was considered by a legal member and a further request for information sent out on 9th June 2022, requiring a response by 23rd June 2022, requesting the following information, failing which the application may be rejected:
 1. Please provide the evidence of service of the Notice to Quit and S 33 Notice previously requested. Please note that service on the tenant by email for notices in connection with tenancies under the Housing (Scotland) Act 1988 is not a valid method of service and if this is the only manner in which the documents were served the application would have to be rejected.
 2. Please provide a fully completed S 11 Notice and proof of service on the local authority. The S 11 Notice you provided is incomplete.

3. Please explain how the S 33 Notice, which gives less than the required 6 months, could be considered valid.
4. Please explain how the Notice to Quit, which appears not to be issued to an ish date, could be considered valid.
5. Please provide the AT5 document as you are making the application under rule 66.
6. If you wish to base the application on another legal ground of eviction please amend the application accordingly to the rule you wish to use, using a replacement application form for that rule and provide the necessary corresponding documents as listed in the rules of procedure.

You are strongly advised to take legal advice on the matter before you send your reply.

8. By email dated 9th June 2022, the Applicant responded as follows:

Just looking for a bit of help before i go to i lawyer so I know what i am talking about.

The S11 notice is incomplete whats missing

The S33 notice I gave the tennant up to 1.03.22

And the notice to quit states 1.3.22

AT5 is that not the same as AT6 I was told to use that

Please see what i have been send and point me in the correct direction

9. By email dated 10th June 2022, the Applicant responded with a section 11 notice and evidence of service, stating as follows:

I have found what i sent to Jenna Spence at East Renfrewshire Council She Noted the Section 11 and the notice to leave on the 1.3.22

is it because the 33 and AT6 are dated 30.11.21 i was sure i changed that also Is this what is wrong

10. The application was considered further and an email issued to the Applicant dated 14th June 2022, as follows:

The legal member has considered your request, and she notes that there have now been several information requests made to you and it would appear that you are uncertain about what is being asked. She would

encourage you to seek legal advice. The administration cannot provide you with legal advice. She is also not certain what it is you require clarified, but would advise as follows:

1. There is a form to complete for section 11 notices, it is a self-explanatory document and you merely have to complete the questions asked in it.
2. Section 33 notices by law required 6 months' notice if served between April 2020 and 31 March 2022
3. Notices to quit require to end the contractual tenancy on the end date (the end date is calculated having regard to the term of the lease)
4. AT5 and AT6 notices are different notices and do different things

11. By email dated 15th June 2022, the Applicant made the following submissions:

Ref the notice to Quit and the S33 Lisa was handed these by myself. The reason i sent them by e-mail was for Jenna Spence at East Renfrewshire Council so she would have a copy and just copied Lisa in as well back in September 2021 And told Lisa when I handed the paperwork that I would not be renewing the lease. The proof that the council received them Jenna " i note receipt of the section 11 " see email. The Section 33 has the date 1st gave Lisa the paperwork and hoping to get the house back by 30.11.21 . But Jenna Spence explained that i need to give 6 months notice ref Covid . Which I did in the notice to leave and the section 11. And changed the paperwork as you can see, I was told to also give a AT6 which I did , now I know this is incorrect I can't change that . But surely I have given enough notice and Lisa is happy to move out. But the council will not take action until she is made homeless, which I think is crazy.

So this is why I have taken this action so the council can get Lisa a house.

I know she has done a lot of stuff without my permission and will attach the list also. I have tried to see a lawyer but none can see me at short notice and I am going on Holiday to the 26th of June.

So I now know some things are a bit incorrect, but surely Lisa has been given enough notice the council knows about it. All we need to get things moving is an eviction notice and then the council can rehome Lisa. Can you pass this on to the person that gets it. I hope this is enough to get my house back.

12. The application was considered further on 30th June 2022.

Reasons for Decision

13. 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."

14. '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"*.
15. The application cannot proceed as it stands. A Rule 66 application only pertains to a short assured tenancy. No Form AT5 appears to have been served in this case, so the tenancy cannot be a short assured tenancy. In any event, the notice period provided is defective and the Notice to Quit has not been served to an ish date of the tenancy.
16. 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.

Helen Forbes

Legal Member/Chair

30th June 2022
Date