



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/CV/22/4010

Re: Flat 3/1, 95 George Street, Paisley, PA1 2JX ("the Property")

Parties

Mr Ronnie Carswell (Applicant)

Mr Stephen Suttie (Respondent)

Rentahome Scotland Limited (Applicant's Representative)

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 rejected 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 on Form F for civil proceedings was received by the Tribunal on 2 November 2022. The application sought an eviction order and enclosed (in so far as relevant) a short assured tenancy agreement (SAT), Notice to Quit and Section 33 Notice.
2. On 25 November 2022 the Tribunal emailed the Applicant's Representative in the following terms:

"Before a decision can be made, we need you to provide us with the following: 1. You have submitted your application on Form F which relates to civil applications rather than eviction applications. Please submit a Form E if you wish to proceed with an eviction application. 2. Please

provide proof of service of the Notice to Quit and Section 33 Notice on the tenant. 3. Please provide your comments on the validity of the Notice to Quit as the date specified does not coincide with the ish date of the tenancy. 4. Please provide proof of service of the Section 11 Notice on the local authority.”

3. The Tribunal received some of the requested information by email of 5 December 2022. The information received included an amended Form F.

4. The Tribunal considered the application and wrote again on 21 December 2022 in the following terms:

“Your further information has been assessed by a legal member who has requested the following information or documentation: • You have not addressed points 1, 2 and 3 raised in our letter of 25th November 2022. Instead, you have provided a further copy of the Notice to Quit and the application form. Please address the points raised, failing which, your application is likely to be rejected.”

5. The Applicant’s Representative responded by email of 12 January 2023 stating that all the documentation had been sent previously.

Reasons for Decision

6. 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.”

7. '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*”.

8. The application was made on the wrong Form. It failed to include proof of service of the Notice to Quit and Section 33 Notice. The Notice to Quit was dated 24 August 2022 and purported to terminate the tenancy on that same date. The SAT ran from

28 November 2016 until 28 May 2017 and continued monthly thereafter. The ish date of the SAT was 28th of the month. The Notice to Quit was invalid and the tenancy continued.

9. Even if the application had been on the correct Form and under the correct Rule the Tribunal could not have granted an eviction order. The Tribunal considered the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above). The Tribunal considered that the application was frivolous, misconceived and had no prospect of success. Furthermore, the Tribunal consider that there was 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.

3 February 2023

Legal Member/Chair

Date