



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/21/2396

Re: 3 Raxton Steading, Tarves, Ellon, AB41 7LE ("the Property")

Parties

Marquis of Aberdeen (Applicant)

Mr Anshuman Mathur (Respondent)

Masson Glennie LLP (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 was received by the Tribunal originally under Rule 65 on 1 October 2021. The grounds for possession/eviction were stated to be Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**). The following documents were enclosed with the application:

- (i) Short Assured Tenancy (**SAT**) commencing 25 November 2010 until 26 May 2011 then continuing monthly thereafter until terminated by either party giving 40 days' notice;

- (ii) Notice to Quit dated 17 December 2020 specifying that the tenancy would terminate on 22 June 2021;
- (iii) AT6 dated 30 September 2020 specifying the grounds for possession as being Ground 8 and that the earliest date for raising proceedings was 22 June 2021.

2. The application was considered by the Tribunal and further information was requested by letter of 28 October 2021. In particular the Applicant was requested to provide the following further information:

*“Before a decision can be made, we need you to provide us with the following:
1. The Notice to Quit appears to be invalid as the date specified does not coincide with an ish. Please clarify the basis upon which the Tribunal can proceed to consider the application. Please also provide evidence of delivery of the Notices which were issued by recorded delivery, such as a Royal Mail track and trace report.
2. Please provide a copy of the section 11 notice and evidence that it was sent to the local authority.
Please reply to this office with the necessary information by 11 November 2021. If we do not hear from you within this time, the President may decide to reject the application.”*

3. The Applicant replied by email of 11 November 2021 in the following terms:

“VALIDITY OF NOTICE

The Notice is a combined Notice to Quit and AT6 (Notice of Intention to raise proceedings) and contains notwithstanding the ish discrepancy all of the prescribed information in terms of the applicable legislation. It would be equitable for the Tribunal to consider the application in all the circumstances and consistent with the overriding objective (rule 2 of the 2017 regulations). The respondent has been aware of the matter since December 2020. Further, it cannot be stated that the application is in any manner frivolous or vexatious and there is accordingly no compulsion on the Tribunal to reject the application (reference rule 8 of the 2017 regulations).

RECORDED DELIVERY

A recently retired colleague dealt with the application and my understanding is that the posting certificate was lost. However, the tenant has acknowledged receiving the Notice to Quit and it is respectfully submitted that this acts as sufficient evidence of intimation of receipt of the Notice to Quit and that the tenant would be personally barred from arguing otherwise.

SECTION 11 NOTIFICATION TO THE LOCAL AUTHORITY

I cannot see any sign of such a Notice amongst the papers of my retired colleague but would submit that the absence of the same does not itself prohibit the Tribunal from receiving and progressing the application. “

Reasons for Decision

4. 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."

5. '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"*.

6. The application seeks to proceed under Rule 65 using Ground 8 of Schedule 5 to the Act. In order to rely upon these Grounds the Applicant must have validly terminated the SAT. The commencement date of the tenancy was 25 November 2010 until 26 May 2011 then continuing monthly thereafter until terminated by either party giving 40 days' notice. The Notice to Quit states 22 June 2021 as the date by which the Respondent should quit and remove. The 22 June 2021 was not an "ish" of the tenancy. The tenancy was not validly terminated at its "ish" and continues as a consequence.

7. Rule 65 (b) (v) of the Chamber Procedure Rules requires that a copy of the section 11 Notice is provided along with the application. No copy has been provided. A section 11 Notice "must" be served on the local authority in terms of section 11(1) of the **Homelessness etc. (Scotland) Act 2003**. The Tribunal has no discretion to dispense with this requirement.

8. As the tenancy has not been validly terminated and a section 11 Notice has not been served the Tribunal cannot grant the order sought. 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.

Alan Strain

26 November 2021

Legal Member/Chair

Date