



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/20/0012

Re: 3 Macdougall Quadrant, Bellshill, ML4 2SU ("the Property")

Parties:

Mr Gerard Boyle ("the Applicant")

Mr Andrew Cruickshank ("the Respondent")

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 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 65 on 6 January 2020. The grounds for possession/eviction were stated to be non-payment of rent, conducting business from the property and Anti-Social behaviour. The following documents were enclosed with the application:
 - (i) Tenancy Agreement commencing 15 January 2016;
 - (ii) Notice to Quit dated 1 April 2019;
 - (iii) Photographs.

2. The application was considered by the Tribunal and further information was requested by letter of 7 January 2020. The Applicant was asked:

- (a) To provide copy AT6;
- (b) Evidence of the statutory ground under which possession was sought;
- (c) A copy of the section 11 Notice to the local authority;
- (d) Evidence of service of the section 11 Notice.

The Applicant was given until 14 January 2020 to respond failing which the application may be rejected.

3. The Applicant responded on 16 January 2020 providing a copy AT6 and note that a copy of the AT6 had been given to the local authority. The AT6 was dated 13 January 2020, did not specify the earliest date proceedings could be raised and specified grounds 1, 8, 14 and 15 of schedule 5 to the 1988 Act.

4. The Tribunal again considered the application and wrote on 22 January 2020 requesting:

- (a) Copy Landlord Registration;
- (b) Copy Notice to Quit;
- (c) Proof of service of the Notice to Quit and AT6;
- (d) Evidence in relation to the grounds that were relied upon;
- (e) Copy Section 11 Notice and proof of service.

The Tribunal gave until 5 February 2020 to do so.

5. No response was received. The application was considered again by a Legal member on 13 February 2020.

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 seeks to proceed under Rule 65 without providing the information required under Rule 65. The Tribunal could not grant an order for recovery of possession/eviction in the circumstances.

9. In light of the above reasons 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

13 February 2020

Legal Member/Chair

Date