



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/19/1901

Re: Flat 2/2, 4 Tower Terrace, Paisley, PA1 2JT ("the Property")

Parties:

Mrs Jennifer Glen ("the Applicant")

Mr Michael Parnis ("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 19 June 2019. 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**) (incomplete) for a 6 month term from the commencement date of 19 January 2015 in respect of the Property which period is said to renew automatically for further periods of 6 months;
 - (ii) AT5 dated 17 January 2015;

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- (iii) AT6 dated 12 April 2019 which relies upon Grounds 8 and 11 and specified 29 April 2019 as the earliest date proceedings could be raised;
- (iv) Notice to Quit dated 12 April 2019 which specifies 29 April 2019 as the date to Quit;
- (v) Sheriff Officer Certificate of Service of AT6 and Notice to Quit on 12 April 2019;
- (vi) Section 11 Notice to local authority;
- (vii) Bank statements of Applicant showing rent payments/arrears.

2. The application was considered by the Tribunal and further information was requested by letter of 25 July 2019. The Applicant was asked:

- (a) To provide a full copy of the SAT as only pages 4 and 7 had been produced;
- (b) On what basis it was considered that the Notice to Quit was valid given that the ish date appeared to be 19 January/July each year; and
- (c) To provide a clear breakdown of the rent due/paid and total arrears.

The Applicant was given until 8 August 2019 to respond failing which the application may be rejected.

3. No response was received so the Tribunal contacted the Applicant's agents by telephone and was informed that the information would be sent in by 19 August 2019. No information was received.

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. In order to do so the tenancy must have been validly terminated and tacit relocation not be operating. The ish

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date of the tenancy is 19 January and 19 July according to the SAT produced by the Applicant. To be validly terminated the Notice to Quit must give notice to quit on the ish date. The Notice to Quit served by the Applicant does not do so. It is invalid and the tenancy has not been terminated. The Tenancy continues by tacit relocation until it has been validly terminated.

7. Furthermore, The Tribunal cannot grant an order for recovery of possession unless the tenancy has either been terminated or the tenancy provides for termination on one of the grounds specified in Schedule 5 to the 1988 Act. The SAT does not provide for termination on the grounds specified in Schedule 5 to the 1988 Act.
8. 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 Applicant has failed to provide necessary information requested within a reasonable time. 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.

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Legal Member/Chair

2 September 2019

Date