



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/20/1628

Re: 9 Carsegreen Avenue, Paisley, PA2 8SB ("the Property")

Parties

Mr Ramsay Lochrie (Applicant)
Mr Gary Byars (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 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 under Rule 66 dated 31 July 2020. The grounds for possession/eviction were stated to be termination of a Short Assured Tenancy (**SAT**) under section 33 of the **Housing (Scotland) Act 1988 (Act)** and that the landlord intended to sell the Property. The following documents were enclosed with the application:

- (i) SAT commencing 5 November 2013 to 5 November 2014 then continuing month to month thereafter;
- (ii) Notice to Quit dated 29 January 2020 which specified 5 April 2020 as the date to quit;
- (iii) Section 33 Notice dated 29 January 2020 which specified 5 April 2020 as the date of termination of the SAT;
- (iv) Certificate of Posting Section 33 Notice and Notice to Quit dated 29 January 2020;
- (v) Section 11 Notice and email serving dated 31 July 2020.

2. The application was considered by the Tribunal and further information was requested by letter of 26 August 2020 as follows:

2. Please provide a copy of the AT5 notice served on the tenancy prior to commencement of the tenancy.

The Applicant was given until 9 September 2020 to provide the information and informed that if it was not provided the President may decide to reject the application.

3. The Applicant responded by email of 27 August 2020 informing the Tribunal *“2. I have not served copy of AT5 form prior to commencing tenancy as the tenancy is brother of my brother in law so there should not have been any issues and he told me not to bother . Because he was a family arrangements I also have not asked for any deposit on the tenancy.”*

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 66 and section 33 of the Act. In order to do so the tenancy must have been a Short Assured Tenancy (**SAT**), validly terminated and tacit relocation not be operating. SAT's are tenancies created under section 32 of the **Housing (Scotland) Act 1988 (Act)** which provides:

32 Short assured tenancies.

(1)A short assured tenancy is an assured tenancy—

(a)which is for a term of not less than six months; and

(b)in respect of which a notice is served as mentioned in subsection (2) below.

(2)The notice referred to in subsection (1)(b) above is one which—

(a)is in such form as may be prescribed;

(b)is served before the creation of the assured tenancy;

(c)is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and

(d)states that the assured tenancy to which it relates is to be a short assured tenancy.

The Applicant has confirmed that no AT5 was served prior to commencement of the tenancy. An AT5 is the prescribed notice referred to in section 32(2) (a) of the Act. The tenancy cannot be an SAT under the Act and had not therefore been validly terminated.

7. 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.

A Strain

8 September 2020

Legal Member/Chair

Date