



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 'the Rules'.

In respect of application by Mr Colin Gilburt and Mrs Jane Gilburt in terms of Rule 65 of the Rules.

Case reference FTS/HPC/EV/19/2062

At Glasgow on the 17 September 2019, Lesley Anne Ward, legal member of the First –Tier Tribunal 'the Tribunal' with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1)(a) and (c) of the Rules.

1. This is an application on behalf of Mr Colin Gilburt and Mrs Jane Gilburt, the owner of the property at 16 Pilton Loan Edinburgh EH5 2EZ, 'the property', for recovery of possession of the property in terms of Rule 65. The application was made by Mrs Gilburt on 3 July 2019.
2. The application was accompanied by the following:-
 1. Lease for let of the property from 23 January 2015 until 23 January 2016.
 2. AT5
3. The tribunal wrote to the applicant on 5 July 2019 as follows:

The following information is required from you before your application can proceed to the Chamber President for consideration:

A copy of the notice served on the tenant by the landlord of intention to raise proceedings for possession of a house let on an assured tenancy (AT6)

1. *A copy of the notice to quit served by the landlord on the tenant (if applicable)*
2. *Evidence as the applicant has that the possession ground or grounds has been met*

3. A copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003 (13) (if applicable).

4. The applicant responded by email dated 6 July 2019 as follows:

Please find the requested paperwork for the reference numbers.

Please note that since this was served, the tenants rent arrears have increased to over 3 months and so we would like them to vacate asap, as the grounds of over 3 months have been met. So it is now ground 8. They are not on housing benefit.

5. The following documents accompanied the email:

1. s33 notice dated 14 May 2019 stating that vacant possession is required by 25 July 2019.
2. AT6 referring to ground 11 and rent arrears of over 3 months dated 3 June 2019 and stating that proceedings will not be raised until 25 July 2019.
3. Notice to quit dated 3 June 2019 with no dated given for the tenant to quit the premises.

No proof of service of the AT6 was produced.

6. The tribunal wrote a further email to the applicant on 26 July 2019 as follows:

Before a decision can be made, we need you to provide us with the following:

With regard to your application I note that you have raised the application referring to Ground 8 of Schedule 5 of the Housing (Scotland) Act 1988, however the AT6 form which is the form required to be served in advance of any application for eviction under section 19 of the 1988 refers to Ground 11 and not Ground 8. In addition I note that as of the date of the AT6 form there was not 3 months rent outstanding as your application refers to rent due and not paid on 1st May, 1st June and 1st July. The application is dated 1st July and the from AT6 is dated 3 June 2019 so at the date of the AT6 form there was not more than 3 months rent due therefore Ground 8 cannot be met using a form dated 3rd June.

Furthermore the detail of Ground 11 (which states "Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tent has persistently delayed paying rent which has become lawfully due" is not specified in any detail in the AT6 that you have sent in and the particulars of the ground require to be specified in the notice in terms of s18(2) of the 1988 Act.

In order that we can consider whether your application can be processed can you provide the following:

L.W

1. Can you advise if you have served another AT6 form which refers to Ground 8 and is dated later than 1st July or refers to Ground 11 and has the particulars of the ground specified in it? If so can you send it to us with proof of service?
 2. Can you also please send a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003.
 3. We will also require the consent of the co-owner Mr Gilbert to any application.
7. The applicant replied by email on 26 July 2019 as follows:

Originally on 3 May we gave them 2 months notice until 25 July, paying attention to the ish date, on the grounds of rent arrears. Then by the time I sent the forms to the tribunal they were 3 months in rent arrears as of 1 July.

I have only sent them the AT 6 form. There are no others. I emailed the tenant and asked them to get in touch with the council about impending homelessness. I sent a copy of the email to you.

8. There are serious problems with this application that the applicant has not resolved:
1. No letter required in terms of s11 of the Homelessness etc Act has been produced despite two requests.
 2. No proof of service of the AT6 has been produced.
 3. The notice to quit is invalid as the address of the property is not narrated and no date is given for the tenant to leave the property.
 4. The AT6 states that proceedings will not be raised before 25 July 2019 but the application was dated 1 July 2019 and received by the tribunal on 2 July 2019.
 5. The notice period for an AT6 with ground 11 or 8 is 2 weeks and not 2 months.
 6. The AT6 does not comply with s19(2) of the Housing(Scotland) Act 1988 as the grounds being relied upon are not specified in the AT6.
9. The notice to quit being invalid is not fatal as the lease between the parties narrates the grounds in terms of s18(6) of the Act. The AT6 lodged however is problematic. It is open to the tribunal at any case management discussion to allow the AT6 to be amended in terms of s18(6) however it is my view that the AT6 served here is meaningless. It refers to ground 11 without narrating the ground and it also refers to 3 months rent arrears even though the 3 months have not yet elapsed.
10. There are further problems with this application as the proof of service of the AT6 and the homelessness letter have not been produced. The incorrect notice period has been used in the AT6 and the application has been made before the erroneous period of notice has expired. Even if the tribunal was prepared to allow the AT6 to be amended these are fundamental problems which have not been resolved.
11. Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if **“they consider that an application is vexatious or frivolous”**.
12. “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”.

13. I consider that this application is frivolous or vexatious and has no reasonable prospect of success for the reasons given above. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept that aspect of the application as it does not meet the essential requirements of rule 65.

NOTE: What you should do now.

If you accept this decision there is no need to reply.

~~If you disagree with this decision you should note the following:~~

An applicant aggrieved by this decision of the Chamber President or any legal member acting under delegated powers 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

L.W

Lesley Anne Ward

Legal Member