

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision 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/18/0262

Re: 59 Woodmill Road, Dunfermline, KY11 4AD ("the Property")

Parties:

Roseleaf Ltd in administration, City Point, 65 Haymarket Terrace, Edinburgh, EH12 5HD ("the Applicant")

Coulters Lettings Ltd, 32 North West Circus Place, Edinburgh, EH3 6TP ("the Applicant's Representative").

Mr Nick Spencer, 59 Woodmill Road, Dunfermline, KY11 4AD ("the Respondent")

1. On 1 February 2018, an application was received from the Applicant. The application was made under Rule 66 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under a short assured tenancy. The following documents were enclosed with the application:-

- (i) Notice to Quit;

- (ii) Section 33 Notice;
 - (iii) Form AT6;
 - (iv) Certificate of service.
2. Items (ii) and (iii) above designate the landlord of the Property as 'Roseleaf in administration' and 'Roseleaf Ltd in administration', respectively.
3. On 6 February 2018, a request for further information was sent to the Applicant's Representative, requiring a copy of the tenancy agreement and s.11 Notification to the Local Authority. These items were received later the same day, by e-mail. The tenancy agreement presented gave the name of the landlord as 'Roseleaf Properties Ltd.' A further request for information was sent on 15 February 2018 indicating, among other things, that a form AT5 would be required to support an application under Rule 66 and in pointing out the apparent discrepancy in terms of the name of the landlord used across the notices and tenancy agreement. A Form AT5 was received on 27 February 2018, which does not design the landlord, referring only to its agents. Further correspondence has established that the Applicant wishes to proceed in terms of Rule 66 and that the notices submitted thus far are the only notices served in relation to the property.

DECISION

4. I have considered the application 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;
- (b) the dispute to which the application relates has been resolved;
- (c) they have good reason to believe that it would not be appropriate to accept the application;
- (d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(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."

After consideration of the application, I consider 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.

REASONS FOR 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". It is that definition which I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, in the sense of being misconceived and hopeless.
6. The Applicant relies on s.33 of the Housing (Scotland) Act 1988, but is unable to produce a valid notice under s.33(1)(d) of that Act, due to an apparent error in designing the landlord in the notice served. On that basis, the application is fundamentally misconceived and is hopeless.

What you should do now:-

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:-

An applicant aggrieved by the decision of the Chamber President, or any 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 first seek permission to appeal from the First-Tier Tribunal. That party must seek permission to appeal within 30 days of the date of the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

N Young

16 MAY 2018

Legal Member/ Chair

Date