

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ANDREW UPTON, LEGAL MEMBER OF
THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT**

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of
Procedure 2017 ("the Rules")

in connection with

59B Millhill, Musselburgh, EH21 7RL

Case Reference: FTS/HPC/EV/17/0492

DIRECT LETTINGS (SCOTLAND) LIMITED ("the Applicant")

ELLIE PURVES; KIERON GLYNN ("the Respondents")

1 On 14 December 2017, an application was received from the applicant via its solicitor. 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) Copy Short Assured Tenancy;
- (ii) Copy Notice under section 33 of the Housing (Scotland) Act 1988;
- (iii) Copy Notice to Quit;
- (iv) Copy Sheriff Officer's Execution of Service; and
- (v) A Schedule of Rent Arrears.

2 In terms of the tenancy agreement, the landlord is noted as Haddington Estates Limited. The Respondents are noted as the tenants. The Applicant appears from the papers provided to be the letting agent of Haddington Estates Limited, which is the true landlord.

3 A request for further information was issued to the Applicant's solicitor, seeking (amongst other things) clarification as to the identity of the landlord. That request was responded to by

A Upton

email on 27 December 2017 by Ms Seaward, solicitor for the Applicant, in the following terms:-

"Direct Lettings (Scotland) Limited are appointed as factors by the landlord. It used to be the case that a factor could raise on behalf of the landlord, I assume this is still competent?"

DECISION

4 I 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;

(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."

5 After consideration of the application, the attachments and correspondence from the Applicant's solicitor, 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

6 '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

A Upton

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, misconceived, and has no prospect of success.

7 The issue identified in this action is whether the Applicant has title to sue. The Applicant's solicitor, in the correspondence received on 27 December 2017, accepts that the Applicant is neither the landlord nor the heritable proprietor of the tenanted property. The Applicant is described as "factor".

8 The Applicant appears to proceed on the basis that, as agent of the Landlord, it has title to sue in this application. In the Stair Memorial Encyclopedia, Civil Procedure (Reissue), at paragraph 78, the title of agents to sue is summarised as follows:-

"Where an agent transacts as such for a disclosed principal, it is the principal who should sue and be sued. Generally the agent will have neither liability nor title to sue. Exceptions will occur if, despite his status as agent, the agent himself undertakes to perform the obligation in question or if he acts outwith his authority. An agent of an undisclosed principal may sue or be sued in his own name. The principal may disclose himself and then he can sue or be sued in his own name. In the event of disclosure, a person seeking to sue will require to elect whether to sue the agent or principal since liability is alternative and not join. Similar considerations apply where an agent contracts ostensibly as principal."

9 In Gloag and Henderson, *The Law of Scotland*, 14th Ed., at paragraph 18.27, it says that, *"Where the agent names his principal, the general rule is that the principal alone is the contracting party, and that the agent is under no liability and has no title to sue on the contract."*

10 It seems to me that whilst it may be the case in circumstances where the agent is acting on behalf of an undisclosed principal, or in a situation where the agent has undertaken to perform the obligation of the principal, that an agent may sue in his own name, that is not the situation here. The Applicant is agent for a disclosed principal, namely Haddington Estates Limited. The contract is plainly between Haddington Estates Limited as landlord and the Respondents as tenants. I see no reason to depart from the general rule with regards to agents acting on behalf of disclosed principals. As such, it is my view that the Applicant has no title to sue. Accordingly, the application is rejected on the basis that it is frivolous.

What you should do now

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

A Upton

If you disagree with this decision: –

An applicant aggrieved by the 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 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. Information about the appeal procedure can be forwarded to you on request.

A Upton

Mr Andrew Upton
Legal Member
8 January 2018