



Decision with Statement of Reasons of H Forbes, 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/PR/22/0688

Re: 15 Dunlop Street, Cambusland, Glasgow, G72 7SD ("the Property")

Parties:

Natasha Escott ("the Applicant")

Bryan Coyle ("the Respondent")

Tribunal Member:

Ms H Forbes (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. An application was received by the Tribunal under Rule 68 on 7th March 2022. The Applicant indicated that she had lived in the Property for 13 years, 5 years as a couple with the Respondent. For the remaining years, she has paid the mortgage for the Property, in which she claimed to have a 40% share of equity.
2. The application was considered by the Tribunal and further information was requested by letter dated 25th March 2022, as follows:

It is not clear what you are asking the Tribunal to do. The application is made under Rule 68 which is an application by a tenant to be given a written tenancy agreement and rent book. However, you have stated that you want to prevent the Respondent from enforcing an eviction order. You have also stated that you own 40% of the house and pay the mortgage and that the Respondent is your former husband. The Tribunal

only deals with applications between landlords and tenants. If you are not the tenant of the property, and the property is a former matrimonial home, then the Tribunal does not have jurisdiction. Please clarify the legal basis of your application to the Tribunal. You may wish to take urgent legal advice on the matter.

3. By email dated 25th March 2022, the Applicant replied as follows:

I'm unsure if I'm replying to the correct place but in regards to the email I received I can confirm I am the tenant, I live in the said property with my 2 children aged 7 & 13 and have done for the last 14 years , 8 of which as a single parent paying the full mortgage etc I hope this helps. I do have a lawyer I can attach his email if needed

4. The application was considered by the Tribunal and further information was requested by email dated 6th April 2022, as follows:

As previously stated in our letter of 25 March 2022 please provide further information with regard to the issue of obtaining a rent book and a written tenancy agreement. The application you made under Rule 68 relates to a request of a tenant to have the landlord provide a written tenancy agreement and a rent book in cases where rent is paid on a weekly basis. If you are asking the Tribunal to do anything else you will have to make the appropriate application. You can find information on the jurisdiction of the Tribunal and the available applications on the Tribunal website. You mentioned you have a lawyer. You are strongly advised to take legal advice on this matter as it is currently not clear what application you wish to make and on what basis. For any application documentation evidencing that you are entitled to the order you wish to obtain must be provided, this usually includes the tenancy agreement and other evidence relevant to the application. You have provided mortgage payment statements which by themselves do not explain why you would be seeking an order under S 30 of the Housing (Scotland) Act 1988 and Rule 68. Please provide further representations on what you wish to apply for and why so this can be considered. Otherwise the application would have to be rejected.

5. By email dated 6th April 2022, the Applicant replied as follows:

I was advised by shelter Scotland to apply for an assured tenancy agreement because as it currently stands I have no tenancy agreement to fall back on and cover me for anything, in this case eviction proceedings. I have lived in the home for 13yrs the latter 8 I have been separated then divorced from the home owner (my exs name is solely on the mortgage even though it was bought as the marital home) ... he moved out and I stayed in the house with our son , I now have since had another child he is 7.... I have paid the money to him every month to cover the mortgage in full ir rent and pay for all other aspects of maintaining and decorating the house He is now trying to evict us

from the home because he wants to cut all ties from me? Shelter Scotland advised I should apply for an assured tenancy so I have occupancy rights or that he needs to follow proper protocol to evict us or even have a reason other than to buy a bigger home than the one he already has.

6. The application was considered by the Tribunal and further information was requested by email dated 10th May 2022, as follows:

We note that you have not responded to a number of the further information requests. However in order to see if the tribunal has jurisdiction to accept the application under rule 68 please provide as much information as you hold about what kind of tenancy you say you have, including:

- The full name of the landlords
 - The full name of the tenants
 - Name of the property
 - Date that the tenancy started
 - How often do you pay the rent, and what amount do you pay.
 - What was the term of the tenancy (i.e. how long was it meant to last)
 - If you have a rent book or any other written documents which show that this is a tenancy agreement then please explain what they are and why you think that they are relevant and supply copies of them
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- You also state that the respondent is trying to evict you: have eviction proceedings been raised, and if they have please provide copies of those papers.

Without further information this application may not be accepted.

7. By email dated 10th May 2022, the Applicant responding, providing further information on the background to her case, reiterating her previous submissions, and stating that a decree had been granted at court to remove her from the Property and that the Property was to be sold. The Applicant included a copy Charge for Removing dated 1st April 2022.
8. The application was considered by the Tribunal and further information was requested by email dated 1st June 2022, as follows:

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

1. It is still not clear on the information provided that there was, in law, a landlord/tenant arrangement between yourself and your husband. The paperwork that you have provided indicates that an order was granted by the Court for your eviction in a type of action that does not involve a landlord and tenant relationship. In order to allow us to accept your application, we would require written representations as to the legal

basis for your claim. You state that you have a solicitor, so you would be strongly advised to consult your solicitor in order to assess whether you have a valid claim, or whether the application ought to be withdrawn.

2. You mentioned that the property was to be sold. Has this taken place? If so, the landlord may have changed, and you would be unable to pursue an application against the former owner/landlord, if, indeed, he was your landlord

9. By email dated 1st June 2022, the Applicant replied, stating that she did not have a written agreement that her ex-husband was her landlord and that she had a minute of agreement.

10. The application was considered by the Tribunal and further information was requested by email dated 1st June 2022, as follows:

We are still not satisfied that you have made a valid application in terms of rule 68 of the tribunal rules. So far the only application you have made to us is to ask the Tribunal to provide a written tenancy agreement for you. You say that you have a minute of agreement. Please send this to us to see if it is of assistance. Please also consider what you hope to achieve by making this application and whether you wish to withdraw it.

The Applicant was given until 8th July 2022 to respond, failing which the application may be rejected. No response was received from the Applicant.

11. The application was considered further on 19th July 2022.

Reasons for Decision

12. 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.

13. '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*".
14. The application cannot proceed in the absence of the requested information. It is not clear that there is a legal basis for the application that would allow the Tribunal to proceed in terms of Rule 68.
15. 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. It would not be appropriate to accept the application. 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.

H Forbes

Legal Member/Chair

19th July 2022
Date