



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/21/1810

Re: 3 Quarry Road, Cults, Aberdeen, AB15 9EX ("the Property")

Parties:

Benjamin Belknap ("the Applicant")

Barbara Hargreaves; John Hargreaves ("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. The application was received by the Tribunal under Rule 110 on 26th July 2021. The Applicant included evidence of house sale listings, social media marketing posts, copy email correspondence between the parties, and a copy of the private residential tenancy agreement between the parties that commenced on 20th September 2019.
2. The application was considered by the Tribunal and further information was requested by letter dated 10th August 2021, as follows:
 1. You have given no details in Sections 7b or c of the application as to what you are seeking or why. Please provide a further copy of the relevant pages of the application with sections 7b and c duly completed.

2. Please provide a copy of the notice to leave which should have been served on you requesting that you leave and providing the grounds relied on. Please also advise when and how it was served on you e.g. by e-mail or recorded delivery?

3. Please advise if you are aware if the landlord moved into the Property and if so for how long?

The Applicant was given until 24th August 2021 to respond, failing which the application may be rejected.

3. By email dated 11th August 2021, the Applicant responded with documents as follows:

1. Please see attached for completed sections 7(b) and 7(c).

2. I've reattached the email which we are recognizing as our Notice to Leave. The subject of this email is 3 Quarry Road Notice Period, from our landlord, Barbra Hargreaves.

3. We are not aware when or if the landlord moved back into the property. A property staging company moved furniture into the residence 2-3 days after we vacated the residence, so we assume they did not move back into the property.

4. The application was considered by a legal member and a further request for information sent out on 26th August 2021, requiring a response by 9th September 2021, requesting the following information, failing which the application may be rejected:

(1) You have only named one Respondent on the application but there are two joint landlords named on the Private Residential Tenancy agreement you have produced. If you wish to amend the Application please provide a paper apart with the second Respondent's name and address;

(2) Please provide a copy of any Notice to Leave you received from your landlord(s), as previously requested;

(3) Section 8 of your Application is incomplete, as the supporting documents you are relying upon are not listed. Please provide a numbered list of documents you are relying on as supporting evidence for your claim

5. By email dated 8th September 2021, the Applicant responded attaching further documents including list of documents, amended form and a tenant statement:

Please see the attached documents. I may have to send multiple replies if all the files do not fit. Last time we attached the copy of the email string

from our landlord and our reply in Gmail. This is the only "Notice to Leave" we received. That's all our landlord sent. If there was supposed to be something official like another document sent to us titled Notice to Leave, we did not get it and we had no idea we were supposed to. No one informed us and we were working with a local relocation agent and a relocation company. We took the email on March 5th, 2021 as our Notice to Leave. Is it the landlord's responsibility to understand proper documentation and Housing procedure when becoming a landlord? Our real estate relocation agent is also willing to supply more documentation if necessary.

6. The application was considered further and a letter issued dated 29th September 2021 requesting the following:

- Thank you for the further information you have provided unfortunately you have advised that you do not appear to have been served with a Notice to Leave, which is a formal document, as required to lodge a claim for wrongful termination under Rule 110 and S58(2) of the Private Housing (Tenancies) (Scotland) Act 2016. As this is a requirement to raise an application under this section and rule please advise why you believe this application can be accepted or please confirm if you wish to withdraw this application.
- If you feel the Landlord has committed a breach of your tenancy agreement you may raise a civil application under Rule 111.
- You may wish to seek some legal advice on this matter if you have not already done so and you may obtain this from a solicitor or an agency such as Shelter or the Citizen Advice bureau.
- Please let us have your response as to whether you wish to submit any further reason why this application under Rule 110 should be accepted or your instructions to withdraw, please note if we do not receive any response it is likely this application will be rejected

A response was requested by 13th September 2021 failing which the application may be rejected.

7. By email dated 16th October 2021, the Applicant stated:

I sent a fresh application to register separately. You should have another email from me with additional information to support that application. Apologies for the confusion.

8. By email dated 5th November 2021, the Applicant submitted the following:

I am submitting my fresh email with my application and supporting documents for a civil application for breach of tenancy agreement.

9. By email dated 16th November 2021, the Applicant submitted a further document, which was a photograph of a file.

10. By letter dated 18th November 2021, the Applicant was contacted to provide the outstanding information requested in the letter of 29th September 2021 by 2nd December 2021 failing which the application may be rejected.

11. By email dated 1st December 2021, the Applicant responded:

I have reviewed our information and am confused on what you need. I have attached what I see on the September 29th email. I thought we did everything for you except we still don't have a formal Notice to Leave document. Do we also need a formal Notice to Leave document to raise a civil application under Rule 111?

12. By letter dated 7th December 2021, the following information was requested from the Applicant, to be submitted by 21st December 2021:

1. Do you wish to withdraw your claim which has been processed under this application number namely 21/1810 under rule 110? If so please confirm this in writing and we will treat this application as withdrawn.

2. If you wish to submit a fresh application for a civil order then please submit it on a Form F giving details of what you are seeking and why and please note you can send it by e-mail or post to the above address. Please attach any other documentation you wish to rely on but please note that you may have to upload different e-mails due to there being a restriction on the size of e-mails our servers will accept

13. No response was received from the Applicant.

14. The application was considered further on 6th January 2022 and a letter issued to the Applicant requesting the outstanding information within 7 days.

15. No response was received from the Applicant.

16. The application was considered further on 7th February 2022.

Reasons for Decision

17. 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."

18. '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*".
19. The application cannot proceed as it stands. An application under Rule 110 can only be accepted if the private residential tenancy was brought to an end in accordance with section 50 of the Private Housing (Tenancies) (Scotland) Act 2016. In this case, the Applicant did not receive a Notice to Leave and the tenancy was not brought to an end in accordance with section 50 of the said Act.
20. 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.

_____ 7th February 2022

Legal Member/Chair

Date