



Decision with Statement of Reasons of Alan Strain, 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/20/2164

Re: 28 Nith Place, Kilmarnock, KA1 3NJ ("the Property")

Parties

Mrs Gillian McKenna-Cansfield (Applicant)

Mr Paul Anderson (Respondent)

Tribunal Member:

Alan Strain (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 67 on 14 October 2020. The application was in respect of a number of Tribunal Rules. This application has been registered under Rule 67 – Application to determine removal expenses.
2. The documentation lodged with the application established that the Applicant had been the tenant of the Respondent from 27 September 2019 until its end in or around 4 October 2020 following notice from the Respondent.
3. The tenancy document was in the form of a Short Assured Tenancy (**SAT**). Given the date of creation of the tenancy it was actually a Private Residential Tenancy (**PRT**) under the **Private Housing (Tenancies) (Scotland) Act 2016**.
4. Rule 67 provides:

Application to determine removal expenses

67. Where a landlord and tenant cannot agree the amount payable by the landlord to the tenant under section 22(1) of the 1988 Act, either the landlord or the tenant may make an application under section 22(2) (payment of removal expenses in certain cases) of the 1988 Act and the application must—

(a) state—

(i) the name, address and registration number (if any) of the landlord;

(ii) the name, address and profession of any representative of the landlord;

(iii) the name and address of the tenant;

(iv) the name, address and profession of any representative of the tenant; and

(v) the details of the tenant's claim for expenses, reasons for disagreement and proposals for settlement; and

(b) be signed and dated by the landlord or tenant or a representative of the landlord or tenant.

Section 22(1) of the Housing (Scotland) Act 1988 (**the 1988 Act**) provides:

22 Payment of removal expenses in certain cases.

(1) Where the First-tier Tribunal makes an order for possession of a house let on an assured tenancy on Ground 6 or Ground 9 in Schedule 5 to this Act (but not on any other ground), the landlord shall pay to the tenant a sum equal to the reasonable expenses likely to be incurred by the tenant in removing from the house.

(2) Any question as to the amount payable by the landlord to a tenant by virtue of subsection (1) above shall be determined by agreement between the landlord and the tenant or, in default of agreement, by the First-tier Tribunal.

Reasons for Decision

5. 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."

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 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"*.

7. The application seeks to proceed under Rule 67 and section 22(1) of the 1988 Act (cited above). The application does not contain details of any removal expenses incurred by the Applicant. Furthermore, the application concerns a PRT which is not regulated by the 1988 Act and has not been terminated by an order of the Tribunal under Grounds 6 or 9 to the 1988 Act. The Tribunal cannot grant any order under Rule 67 on the facts stated.

8. 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.

Alan Strain

21 October 2020

Legal Member/Chair

Date