



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/21/0274

Re: 252 Main Street, Blantyre, Glasgow, G72 0DH ("the Property")

Parties

**Mr Steven Smith (Applicant)
A & G Properties Limited (Respondent)**

Mrs Wendy Stewart (Applicant's Representative)

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 rejected 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 78 on 4 February 2021. The application sought an order for payment of compensation in respect of the landlord's misrepresentation or concealment.
2. Rule 78 of the Tribunal Procedure Rules provides:

Application for compensation for misrepresentation or concealment by landlord

78. Where a former tenant makes an application under section 21 (compensation for misrepresentation or concealment in Cases 7 and 8) of the 1984 Act, the application must—

(a)state—

- (i) the name and address of the former tenant;
 - (ii) the name, address and profession of any representative of the former tenant; and
 - (iii) the name, address and registration number (if any) of the landlord;
- (b) be accompanied by—
- (i) evidence of misrepresentation on the part of the landlord; and
 - (ii) a copy of the order for possession; and
- (c) be signed and dated by the former tenant or a representative of the former tenant.

3. Section 21 of the Rent (Scotland) Act 1984 provides:

21 Compensation for misrepresentation or concealment in Cases 7 and 8.

Where, in such circumstances as are specified in Case 7 or Case 8 in Schedule 2 to this Act, a landlord obtains an order for possession of a dwelling-house let on a protected tenancy or subject to a statutory tenancy and it is subsequently made to appear to the First-tier Tribunal that the order was obtained by misrepresentation or concealment of material facts, the Tribunal may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as a result of the order.

4. Cases 7 and 8 in Schedule 2 to the 1984 Act provide:

Case 7

Where the dwelling-house is reasonably required by the landlord for occupation as a residence for some person engaged in his whole-time employment, or in the whole-time employment of some tenant from him or with whom, conditional on housing accommodation being provided, a contract for such employment has been entered into, and..

- (a) the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment;...

Case 8

Where the dwelling-house is reasonably required by the landlord for occupation as a residence for—

- (a) himself, or
- (b) any son or daughter of his over 18 years of age, or
- (c) his father or mother, or

(d) if the dwelling-house is let on or subject to a regulated tenancy, the father or mother of his wife or husband,

and the landlord did not become landlord by purchasing the dwelling-house or any interest therein after 23rd March 1965 or, in the case of a dwelling-house subject to a regulated furnished tenancy, after 24th May 1974 or, if the dwelling-house was on 7th November 1956 let on or subject to a controlled tenancy, after 7th November 1956.

5. On 17 February 2021 the Tribunal emailed the Applicant in the following terms:

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

- Please provide the full address of the property, including any flat number*
- The legal and factual basis of your application is unclear. Please produce a written paper apart for Section 7 in the Application clearly outlining the legal and factual basis of the claim in terms of Section 21 of the Rent (Scotland) Act 1984.*
- Please produce a copy of the Applicant’s tenancy agreement for the property.*
- Please produce: evidence of misrepresentation on the part of the landlord, as required in terms of Rule 78.*
- Please produce: a copy of the order for possession, as required in terms of Rule 78.*

Please reply to this office with the necessary information by 3 March 2021. If we do not hear from you within this time, the President may decide to reject the application.”

6. The Applicant’s Representative responded by emails of 1 and 3 March 2021 advising that there was no paperwork and no order for possession had been obtained. No Notice to Leave was served. There had been a fire at the Property and the Applicant had been expected to find alternative accommodation himself. His deposit had been returned.

Reasons for Decision

7. 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."

8. '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*".
9. Section 21 of the **Rent (Scotland) Act 1984** applies to cases where the landlord has obtained an order for possession by concealment or misrepresentation relying on Cases 7 and 8 of Schedule 2 to that Act. In this case, no order for possession was obtained. The Tribunal could not grant the order sought by the Applicant in the circumstances.
10. In light of the response from the Applicant's representative and the terms of section 21 of the **Rent (Scotland) Act 1984** the Tribunal considered the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above). The Tribunal considered that the application was frivolous, misconceived and had no prospect of success. Furthermore, the Tribunal consider that there was good reason why the application should not be accepted in light of the fact that section 21 clearly did not apply in the circumstances. 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
Legal Member/Chair

16 March 2021

Date

