

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/22/3885

Re: 10 Meadowhead Avenue, Moodiesburn, Chryston, Glasgow, G69 0DZ ("the Property")

Parties

Mr Samuel Lambe, Ms Karolina Zganiacz (Applicant)

Mrs Helen Culbard (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 110 on 24 October 2022. The application sought a wrongful termination order under section 58(2) of the **Private Housing (Tenancies) (Scotland) Act 2016 (Act)**.
2. The application was considered by the Tribunal and further information was requested by letter of 21 December 2022. The Applicant was asked to provide the following further information:

“An application under rule 110 can only be made where a Private Residential Tenancy has been terminated either by an eviction order from the Tribunal (S 57 (1)) or in terms of S 50 of the Private Housing (Tenancy) (Scotland) Act 2016 (S 58(1)). S 50 of the Act defines that latter situation as “(1) A tenancy which is a private residential tenancy comes to an end if – (a) the tenant has received a notice to leave from the landlord, and (b) the tenant has ceased to occupy the let property”. The meaning of a Notice to Leave is defined in S 62 of the Act as follows: “62 Meaning of notice to leave and stated eviction ground (1) References in this Part to a notice to leave are to a notice which— (a) is in writing, (b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First[1]tier Tribunal, (c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and (d) fulfils any other requirements prescribed by the Scottish Ministers in regulations. (2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons. (3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c). (4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire. (5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.” It does not appear that you have provided evidence that you have received a Notice to Leave on which your case could be based. Please make representations on why you consider your case meets the legal requirements for an application under rule 110 and s 58 of the 2016 Act. You may wish to obtain legal advice on the matter. Please reply to this office with the necessary information by 4 January 2023. If we do not hear from you within this time, the President may decide to reject the application. “

3. The Applicant responded by email of 4 January 2023 in the following terms:

“We believe our case meets the legal requirements for an application under rule 110 and s58 of the 2016 Act on the basis that our landlady gave us notice telephonically and then followed up by email (evidence of these were attached to our initial application) saying that she needed to move back into her house. We accepted this notice on the basis that she was legally entitled to give us notice to move back into her own house. It then later followed that she did not move into her house and the property is now occupied by other tenants (evidence of this attached to our initial application). It is on this basis that we are claiming illegal eviction under rule 110 and s58 of the 2016 Act.”

Reasons for Decision

4. 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."

5. '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*".

6. Rule 110 relates to wrongful termination orders under section 58(2) of the **Private Housing (Tenancies) (Scotland) Act 2016**. Section 62(a) of the Act requires the Applicant to have received a notice to leave in writing. Only verbal notice was given. In the circumstances the Tribunal could not grant an order under Rule 110.

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

24 January 2023

Legal Member/Chair

Date