



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/EV/22/1298

Re: 360 Millcroft Road, Cumbernauld, G67 2QW ("the Property")

Parties

Property One (Applicant)

Ms Leanne Cross (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 65 on 5 May 2022.
2. The application was considered by the Tribunal and further information was requested by letters of 25 May 2022 and 27 June 2022. The Applicant was asked to:

"Before a decision can be made, we need you to provide us with the following: • It is not clear why you consider the ish date on the Notice to Quit to be 8th May, when the tenancy commenced on the 6th of the month. An incorrect ish date may affect the validity of the Notice to Quit. Please provide any representations you wish to make on this matter. In the event that you consider the Notice to Quit to be invalid, please indicate whether you wish to proceed without a Notice to Quit and rely upon section

18(6) of the Housing (Scotland) Act 1988. • Please provide evidence of service of the Notice to Quit/Form AT6 upon the Respondent. • Please provide evidence of service of the section 11 notice upon the local authority. • Please confirm whether you have complied with the Rent Arrears Pre Action Requirements (Coronavirus) (Scotland) Regulations 2020 and provide evidence of this, if possible. Please note that compliance will be taken into account when the Tribunal assesses whether it is reasonable to grant the order. Please reply to this office with the necessary information by 8 June 2022. If we do not hear from you within this time, the President may decide to reject the application”

3. The information was not received.

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 65 provides for certain information to be supplied with an application:

Application for order for possession in relation to assured tenancies

65. Where a landlord makes an application under section 18(1) (orders for possession) of the 1988 Act, 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; and

- (iv) the possession grounds which apply as set out in Schedule 5 of the 1988 Act;
- (b) be accompanied by—
 - (i) a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;
 - (ii) a copy of the notice served on the tenant by the landlord of intention to raise proceedings for possession of a house let on an assured tenancy;
 - (iii) a copy of the notice to quit served by the landlord on the tenant (if applicable); and
 - (iv) evidence as the applicant has that the possession ground or grounds has been met; ...
 - (v) a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003 (if applicable), and
 - (vi) a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and
- (c) be signed and dated by the landlord or a representative of the landlord.

The applicant failed to produce evidence to support the application that had been requested. The application could not proceed.

7. 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

27 July 2022

Legal Member/Chair

Date