



Decision with Statement of Reasons of Shirley Evans, 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/3737

Re: 15 Harland Street, Glasgow, G14 OAT ("the Property")

Parties

Sundeep Purewal, 27 Torridon Drive, Renfrew, PA4 OUS (Applicant)

Michelle Grocutt, 15 Harland Street, Glasgow, G14 OAT (Respondent)

Tribunal Member:

Shirley Evans (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 109 on 10 October 2022. The grounds for possession/eviction were stated to be Ground 12 (Three months' rent arrears) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Application was accompanied by a document headed "Notice to Leave" dated 5 September 2022 addressed to the Respondent with a covering email of the same date and a track and trace receipt. A copy Notice in terms of S11 of the Homelessness etc.(Scotland) Act 2003 with a track and trace receipt and unredacted banks statements were also attached.

2. The application was considered by the Tribunal. The Tribunal requested further information from the Applicant on a number of matters on 9 November 2022. In particular the Applicant was requested to provide submissions on the validity of the Notice to Leave as follows-

“The Notice to Leave you have produced does not appear to be valid as it is not in the correct form and does not contain the information required under the legislation. Please either provide your submissions as to how you consider the notice valid or provide a copy of a valid notice to leave served on the tenant along with proof of service”

3. The Applicant’s representative replied on 12 November 2022 and stated that he believed the Notice should be valid as the Scottish Government Tenancy does not state a particular format has to be used and that it just states at 28 days’ notice has to be sent in paragraph 24 without mention of any format. He went onto submit that the notice had enough information, is easily understood and gives a clear indication as to why the notice was being issued.

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."

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. In terms of Section 52(2) and 52(3) of the 2016 Act

(2)The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a)subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.”

7. Further Section 62 of the 2016 Act provides-

(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-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.”

8. The relevant regulations are the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. There is a prescribed format of a Notice to Leave. A Notice to Leave must comply with Paragraph 6 of these Regulations which provides that-

“A notice to leave given by the landlord to the tenant under section 50(1)(a) (termination by notice to leave and tenant leaving) of the Act must be in the form set out in schedule 5.”

The form of Notice is then set out in Schedule 5.

9. The Notice served on the Respondent on 5 September 2022 does not meet the statutory requirements in Section 62 of the 2016 Act and in particular it does not meet the requirements of the Regulations namely paragraph 6 and Schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. It does not specify the day on which the Landlord expects to become entitled to apply for an order for eviction to the First-tier Tribunal, nor does it specify the Ground of eviction. It is not in the prescribed form. The Tribunal accordingly must reject the application.

10. 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. It has no prospect of success as no Notice to Leave in terms of the 2016 Act has been served on the Respondent.

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.

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Shirley Evans

Legal Member

7 December 2022

Date