



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/22/3752

Re: 54 Newlands Drive, Kilmarnock, KA3 2DL ("the Property")

Parties

T/A MP Property (Applicant)

Mr James Oliver, Mrs Jane Oliver (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 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 66 or Rule 65 on 12 October 2022. The grounds for possession/eviction were stated to be termination of a Short Assured Tenancy (**SAT**) under section 33 of the **Housing (Scotland) Act 1988 (Act)** and Grounds 6, 15 and 16.

2. The application was considered by the Tribunal and further information was requested by letters of 15 November and 23 December 2022 in the following terms.

"Before a decision can be made, we need you to provide us with the following: You have referred to both Rules 65 and 66 in the application. Please advise which Rule applies. If you wish to proceed under both Rules then a separate application will be

registered for the second Rule. For both Rules 65 and 66 a valid Notice to Quit must be served on the tenant. The Notice you have lodged does not appear to be valid as it does not specify a date which coincides with an ish date of the tenancy and does not include all of the required prescribed information. Please advise if you wish to withdraw the application and re-submit it once a valid Notice to Quit has been served or explain why you think the application can be considered. If you are proceeding under Rule 66, please provide the following 1. A valid Notice to Quit with evidence of service on the Respondent 2. Evidence of service of the section 33 notice 3. Evidence that the section 11 notice was sent to the Local Authority.

If you are proceeding under Rule 65 please provide the following 1. A valid Notice to Quit with evidence of service on the Respondent 2. An At6 notice with evidence that it was served on the Respondent. 3. Evidence that the section 11 notice was sent to the Local Authority. 4. Evidence in support of the grounds for possession. You may wish to take legal advice before you respond.”

3. No response was 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. The application seeks to proceed under Rule 66 and section 33 of the Act and potentially also Rule 65. Rules 65 and 66 provide for certain information to be produced in support of the application.

The Applicant has been unable to provide the information requested by the Tribunal or confirm under what Rule the application is to proceed.

7. In light of the above reasons the Tribunal cannot grant the order sought. 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 January 2023

Legal Member/Chair

Date