



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/3536

Re: 12 Morar Place, Newton Mearns, G77 6UA ("the Property")

Parties

Keiko Latta, 2/1 3 Blackfriars Street, Glasgow, G1 1PG("the Applicant")

Patrick Wilson, Sheree Wilson and Katherine Wilson, 12 Morar Place, Newton Mearns, G77 6UA ("the Respondents")

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 66 on 27 September 2022. It was accompanied by a Short Assured Tenancy Agreement between the parties dated 28 June 2017, an AT5, documents headed Notices to Quit and Section 33 Notices dated 20 May 2022 and a Notice in terms of Section 11 of the Homelessness etc.(Scotland) Act 2003.

2. The application was considered by the Tribunal. In particular the Tribunal noted that Clause 1.1 of the tenancy provided that the tenancy would terminate on 6 January 2018 and if not terminated on that date it would continue on a monthly basis thereafter. The Tribunal also noted that the termination date inserted into the Notices to Quit addressed to each of the Respondents was 14 September 2022. The Tribunal requested further information from the Applicant's agent on a number of matters on 31

October 2022. In particular the Applicant's agent was requested to provide submissions on the validity of the Notice to Quit as follows-

"The Notice to Quit provides that the termination date is 14 September 2022. The "ish" date of the lease is 6th day of the month. Please provide your comments on the validity of the Notice to Quit".

3. The Applicant's representative replied on 10 November 2022 in the following terms-

"I have spoken with Ross Letting who, as above, drafted and served the Notice to Quit. They accept that the termination date on the Notice to Quit is wrong. They maintain that they were asked to select the date of 14th September at the client's instance, as this was the most convenient date for her family to move into the property. I would note that this date gave the tenant more than the statutory minimum notice, which should have ended on 6th September 2022."

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. The Applicant seeks repossession of the Property under Section 33 of the Housing (Scotland) Act 1988 as amended ("the 1988 Act"). Section 33 of the 1988 Act provides-

“Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its finish;

(b) that tacit relocation is not operating;

(c) (Repealed)

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house and

(e) that it is reasonable to make an order for possession.

9. The Notices to Quit served on the Respondents do not prevent *tacit relocation* from operating. The only way that *tacit relocation* is prevented is by the service of a Notice to Quit to terminate on the “ish” date. They do not terminate the tenancy on the ish date which is the 6th of the month. The Notices to Quit purport to terminate the tenancy on 14th of the month. That being the case, the Notices to Quit are invalid. The tenancy is therefore continuing. Further it is accepted by the Applicant’s representative that the date inserted in the Notices to Quit is wrong. The Application therefore cannot meet the statutory requirements of Section 33. 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 valid Notices to Quit have been served on the Respondents to prevent *tacit relocation* from operating in terms of Section 33(1) (b) of the 1988 Act.

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.

Shirley Evans

7 December 2022

Legal Member

Date