

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS
OF ANNE MATHIE, LEGAL MEMBER OF THE FIRST-
TIER TRIBUNAL WITH DELEGATED POWERS OF
THE CHAMBER PRESIDENT**

**Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber
Rules of Procedure 2017 ("the Rules")**

in connection with

**Flat 3/2, 128 Main Street, Cambuslang, G72 7EL ("the
property")**

Case Reference: FTS/HPC/EV/18/0919

James Lambert ('the applicant')

Mr Matthew Lynch ("the respondent")

1. On 17 April 2018 paperwork was received from the applicant via their solicitor seeking an eviction order. The application stated that eviction was being sought in terms of Rule 65 (Assured Tenancy Possession). On the application form the possession/eviction grounds were stated as 'Ground 8: At least 3 months' rent is in arrears both on the date on which the notice of proceedings was served and at the date of the hearing.'

Attachments were provided with the application form to support the application comprising

- lease
- ledger
- notice to quit
- AT6

In terms of Rule 5 of the Chamber Rules the Tribunal wrote to the Applicant's representative on 24 April 2018 requesting further information, namely '

- Please provide details of Applicant in Section 2 of application form.
- We require written consent from Applicant that they would like you to represent them .
- A copy of the notice given to the local authority as required under section 19A(1) of the 1988 Act, which states;
 “Notice under subsection (1) above shall be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003 (asp 10)”

A response was received with the information requested by email dated 27 April 2018 from the Applicant’s representative.

In terms of the documents provided there is no evidence of execution of service of the Notice to Quit and AT6 Form but it is noted that the Notice to Quit is dated 31 January 2018 and only gives a period of 14 days for the tenant to vacate the property which is contrary both to the terms of the lease which provides for a month notice period at Clause Eleven and the notice period required in terms of sections 37 and 38 of the Sheriff Courts (Scotland) Act 1907 which is 40 days. The lease makes reference to Ground 8 of Schedule 5 to the Housing (Scotland) Act in Clause 16 but only in the following terms
 ‘Further and without prejudice to the generality of the foregoing , the Letting Agent shall be entitled to recover possession of the subjects of let on Grounds 2 and 8 of Part 1 and any of the grounds other than Ground 9, Ground10 and Ground 17 of Part 2 of Schedule 5 to the Housing (Scotland) Act 1988.’

2. DECISION

The Legal Member considered the application in terms of rule 5 and 8 of the Chamber Procedural Rules. These Rules provide

Requirements for making an application

5.-(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.

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; (b)the dispute to which the application relates has been resolved;

(c)they have good reason to believe that it would not be appropriate to accept the application;

(d)they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e)the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(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.

After consideration of the application, the attachments and submission from the applicant, the Legal Member decided 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.

3. Reasons for the Decision

'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in R v North West Suffolk (Mildenhall) Magistrates Court (1998) Env LR9. He indicated at page 16 of the judgment; "What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic". It is that definition which the Chamber President has considered as the test in this application, and on consideration of this test, the President considers that this application is frivolous and is misconceived and has no prospect of success for the following reasons:-

The Housing (Scotland) Act 1988, as amended, states in Section 18 (6) that 'the First-Tier Tribunal for Scotland shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless-

- (a) The ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9 or Ground 10 or Ground 17; and
- (b) The terms of the tenancy make provision for it to be brought to an end on the ground in question.'

Section 19 of the 1988 Act further provides '(2) The sheriff shall not make an order for possession on any of the grounds in Schedule 5 to the Act unless that ground is specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the First-tier Tribunal for Scotland.'

As detailed above the lease makes no more than a passing reference to Ground 8 and the Notice to Quit is invalid due to inadequate notice being provided. The Section 19 Notice (AT6) also does not contain enough specification regarding the alleged breach of Ground 8.

For the foregoing reasons, the Legal Member does not consider the First-tier Tribunal for Scotland to have jurisdiction in this case and therefore the application is misconceived and is rejected on the basis that it is frivolous.

What you should do now

If you accept the Legal Member's decision, there is no need to reply . If you disagree with this decision -

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, 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. Information about the appeal procedure can be forwarded to you on request.

A Mathie

Legal Member
4 May 2018