

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision with Statement of Reasons of H Forbes, 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/23/4386

Parties:

David McIvor ("the Applicant")

Amanda Mowatt ("the Respondent")

Tribunal Member:

H Forbes (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.

Background

1. An application form under Rule 65 was received on 7th December 2023 with associated documents. An order for possession was sought under Grounds 13 and 14.
2. A Legal Member of the Tribunal considered the application and an email was sent to the Applicant requesting further information on 8th January 2024 as follows:
 - The AT6 you have produced appears to be incomplete, in that there is no Part 4. Please provide a full copy of the AT6 so that your application can be considered further.

Please reply to this office with the necessary information by 22 January 2024. If we do not hear from you within this time, the President may decide to reject the application.

3. By email dated 9th January 2024, the Applicant provided a copy of the Form AT6.
4. A Legal Member of the Tribunal considered the application and an email was sent to the Applicant representative on 12th February 2024 stating the following:

If your application is to proceed solely on the basis of the service of the Form AT6 (utilising the provisions of sections 18 and 19 of the Housing (Scotland) Act 1988) then the tribunal must be satisfied that the tenancy agreement contains appropriate provisions which allow the tenancy to be brought to an end on the grounds for eviction that are set out in the Form AT6 and in the relevant schedule of the 1988 Act and, if so, do those provisions in the tenancy agreement meet the test set out in the case of *Royal Bank of Scotland v Boyle* (1999 Hous LR 63).

The tenancy agreement you have provided appears to be in the standard format used for the English assured shorthold tenancy which makes no reference to the relevant Scottish legislation.

Please provide submissions showing that the tenancy agreement complies with the requirements of section 18(6)(b) of the 1988 Act and that it meets the test set out in the case of *Royal Bank of Scotland v Boyle* (1999 Hous LR 63).

You indicate that the Form AT6 was posted on 1 November 2023 and that its effective date was 17 November 2023. The post office proof of receipt which you have exhibited appears to show that the tenant received the notice on 4 November 2023. Even if you can satisfy the tribunal with regard to the matters raised above, has a valid and appropriate period of notice been given?

Upon receipt of the above information, a final decision can then be taken on whether the eviction application is valid and whether it should be accepted and referred to the tribunal for full determination.

The tribunal would respectfully suggest that the applicant may wish to seek independent legal advice on this matter.

Please reply to this office with the necessary information by 26 February 2024. If we do not hear from you within this time, the President may decide to reject the application.

5. By email dated 25th February 2024, the Applicant responded as follows:

I posted the AT6 on the 1st Of November first class and I assumed that it would be delivered the next day the 2nd – 14 days (the requirement) would make it the 16th. I also hand delivered a copy on the same date, I assume what has happened is that the tenant has read the hand delivered copy then realised that if they didn't accept the post copy by

the 17th or after then it would not make the legal requirement. Now you are telling my tenancy agreement has no legal standing.? I am in a position where my property has been allowed to deteriorate significantly , it will cost at least £20,000 plus to repair (who is going to fund that) . I haven't been allowed access to the property over 3 years, the property has no boiler, fire alarm checks as no access have been given to tradesmen. The tenant is also behind in rent. The property was due to be re-mortgaged in October 2023 and as a surveyor would not have been allowed access my mortgage would have gone on to the standard variable rate (9%). Therefore, I had to raise funds alternatively which has cost me in other ways. This property is meant to help me fund my retirement and all it has given me is significant stress with the delays being huge. This tenant has shown me complete disrespect and is using the system to delay any eviction, please advise me the best route forward

6. A Legal Member of the Tribunal considered the application and an email was sent to the Applicant representative on 20th March 2024 stating the following:

The issue here is that you have not served a notice to quit. As stated clearly in the notice guidance which you submitted with your application, you can only proceed without a notice to quit on certain grounds and provided that the tenancy agreement makes provision for the tenancy to be ended on those grounds, which this tenancy agreement does not do. You would be advised to withdraw the application and serve the correct notices. You would also be advised to take advice on the matter of serving a notice to quit and Form AT6 as it can be complicated. The Tribunal cannot advise you on the way forward, as we are an impartial body.

Please reply to this office with the necessary information by 3 April 2024. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

7. The application was considered by a Legal Member on 30th April 2024.

Reasons for Decision

8. 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."

9. Section 18(6) of the Housing (Scotland) Act 1988 ("the 1988 Act") provides that the Tribunal 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 the ground for possession is Ground 2 or any of the grounds in Part II of Schedule 3 of the 1988 Act, other than Ground 9, and the terms of the tenancy make provision for it to be brought to an end on the ground in question. As no notice to quit has been served, this tenancy remains an assured tenancy. Although Grounds 13 and 14 are contained within Part II of Schedule 3, the tenancy agreement does not make provision for the assured tenancy to be brought to an end on those grounds, not do the terms of the tenancy meet the test set out in the case of *Royal Bank of Scotland v Boyle* (1999 Hous LR 63). Accordingly, the Tribunal cannot make an order for possession of the property.
10. '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"*.
11. Applying the test identified by Lord Justice Bingham in the case of *R v North West Suffolk (Mildenhall) Magistrates Court* the application is frivolous, misconceived and has no prospect of success. 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

J Devine

H Forbes

April 2024

Legal Member/Chair

Date