



Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.

In respect of application by Mr Robin Williamson of Sharp and Fairlie on behalf of Garnet Terrace Property Company in terms of Rule 65 of the Rules.

Case reference FTS/HPC/EV/22/0275

At Glasgow on the 31 March 2022, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1)(a) and (c) of the Rules.

1. This is an application by Mr Robin Williamson of Sharp and Fairlie, on behalf of Garnet Terrace Property Company, the owner and landlord of the property at 2/2, 116 Cumming Drive Glasgow G42 9BW ‘the property’, for recovery of possession of the property in terms of Rule 65.
2. The application was dated 31 January 2022 and received by the tribunal on 1 February 2022.
3. The application was accompanied by the following:-
 1. Tenancy agreement for let of the property from 28 September 2017 to 27 September 2020.
 2. Notice to quit dated 12 March 2020.
 3. AT 6 dated 12 March 2020.
 4. Sheriff Officer’s execution of service of 2 and 3 above dated 13 March 2020.
 5. S11 notice.
 6. AT5.

4. The tribunal wrote to the Sharp and Fairlie on 21 February 2022 as follows:

1. *Can you please provide a written mandate from the Applicants authorising you to act for them in this application?*
2. *It appears the Applicant which is Garnet Terrace Property Company is not the owner of the Property so please advise what right title and interest the applicant has to lease this Property? We require evidence of how the Applicant has the*

right to let out the Property and raise this action and it appears from our search of the Registers that the property is owned partially by an individual and partially under a deed of trust?

3. You have provided a notice to quit which is dated 12th March 2020 and which was served by Sheriff officers however it only gives 14 days notice to quit and a Notice to Quit to be valid requires to give at least 40 days' notice. Please advise if you have served another Notice to Quit and if so please let us have a copy of this with evidence of how and when it was served? If you have not served a further notice to quit please let us have your submissions on why you believe this Notice to Quit can be valid and relied upon to end the contractual tenancy which is required if you are relying on S18 of the 1988 Act and the grounds of eviction are not laid out in the lease?

4. With regard to the AT6 form which is dated 12th July 2021 please provide evidence of how and when this was served? You mention that it was hand delivered but have not provided any details or evidence of how and when this was done.

5. Please provide evidence of how and when the S11 notice was served on the local authority which is Glasgow City Council.

6. Please provide a rent statement that shows when the arrears first started as the rent statement appears to have a balance already due at the start of the statement.

7. Please let us have any evidence of how you have complied with the pre-action requirements contained in the Rent Arrears Pre-action Requirements (Coronavirus)(Scotland) Regulations 2020. You have provided one letter to the tenant please advise if you have sent any more and please provide copies of those.

5. No reply has been received.

6. There are a number of difficulties with this application which have led me to reject it.

7. Firstly, the notice to quit is invalid. It does not tie in with the ish date in the lease of 27 September 2020. It is dated 12 March 2020 and states that the tenant has to leave the property on 27 March 2020 which is only 15 days. The minimum period of notice at common law is 40 days. The notice to quit cannot therefore be relied upon in bringing the tenancy to an end.

8. The applicant could still rely on the terms of s19 of the Housing (Scotland) Act 1988 ('the Act') and proceed on the basis of the AT6, but there are serious problems with the AT6 which cannot be overcome. Further, the tenancy agreement does not narrate the terms of schedule 5 of the Act.

9. The AT6 has expired. It is dated 12 March 2020 and proceedings were not raised until 31 January 2022. S19 of the Act provides :

19 Notice of proceedings for possession.

(1) The [E1 First-tier Tribunal] shall not entertain proceedings for possession of a house let on an assured tenancy unless—

(a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or

(b) [E2 the Tribunal] considers it reasonable to dispense with the requirement of such a notice.

(2) The [E3 First-tier Tribunal] shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground [E4 and particulars of it are] 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 [E3 Tribunal].

(3) A notice under this section is one [E5 in the prescribed form] informing the tenant that—

(a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and

(b) those proceedings will not be raised earlier than the expiry of the period of [E6 two weeks or two months] [E6 28 days, two months, three months or, as the case may be, six months] (whichever is appropriate under subsection (4) [E7 or (4A)] below) from the date of service of the notice.

[E8 (4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—

(a) two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and

(b) in any other case, two weeks.]

[E8 (4) The minimum period to be specified in a notice served before 3 October 2020 as mentioned in subsection (3)(b) is—

(a) two months if the notice specifies only Ground 9 in Part II of Schedule 5 to this Act,

(b) three months if the notice specifies any of the following grounds in Schedule 5 to this Act (whether with or without also specifying the ground referred to in paragraph (a))—

(i) Ground 1 in Part I,

(ii) Ground 15 in Part II,

(c) six months if the notice specifies any of the following grounds in Schedule 5 to this Act (whether with or without other grounds)—

(i) Grounds 2 to 8 in Part I,

(ii) Grounds 10 to 14 in Part II,

(iii) Ground 16 or 17 in Part II.

(4A) The minimum period to be specified in a notice served on or after 3 October 2020 as mentioned in subsection (3)(b) is—

(a) 28 days if the notice specifies only Ground 15 in Part II of Schedule 5 to this Act,

- (b) two months if the notice specifies Ground 9 in Part II of Schedule 5 to this Act (whether with or without also specifying the ground referred to in paragraph (a)),
- (c) three months if the notice specifies Ground 1 in Part I of Schedule 5 to this Act (whether with or without also specifying either or both of the grounds referred to in paragraphs (a) and (b)),
- (d) six months if the notice specifies any of the following grounds in Schedule 5 to this Act (whether with or without other grounds)—
- (i) Grounds 2 to 8 in Part I,
 - (ii) Grounds 10 to 14 in Part II,
 - (iii) Ground 16 or 17 in Part II.]
- (5) The **[F9 First-tier Tribunal]** may not exercise the power conferred by subsection (1)(b) above if the landlord seeks to recover possession on Ground 8 in Schedule 5 to this Act.
- (6) Where a notice under this section relating to a contractual tenancy—
- (a) is served during the tenancy; or
 - (b) is served after the tenancy has been terminated but relates (in whole or in part) to events occurring during the tenancy,
- the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.
- (7) A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.

10. In terms of s19(7) of the Act, the notice shall cease to have effect after 6 months if proceedings have not been raised.

11. Further, as this is a ground 8 application the tribunal cannot dispense with notice in terms of s19(5) of the Act.

12. Even if the AT6 was valid, the application would fail as the tenancy agreement does not narrate the grounds of eviction laid out in schedule 5 of the Act. S18(6) of the Act allows the tribunal to grant an order for recovery of possession where a contract has not been terminated. As this notice to quit is invalid the contract has not come to an end and s18(6) could apply. In the case of Royal Bank of Scotland-v- Boyle 1999 Hous LR 43 it was established that for an application based on s18(6) to succeed the essential ingredients of the ground relied upon must be referred to in the tenancy agreement. Clause 29 of the tenancy agreement makes reference to schedule 5 but the grounds are not narrated and the essential elements of ground 8 are not referred to.

13. Rule 8(1)(a) of the Rules allows an application to be **rejected** by the Chamber President if **“they consider that an application is vexatious or frivolous”**. “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”.

14. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application. There is a fundamental defect with the notice to quit and the AT6.

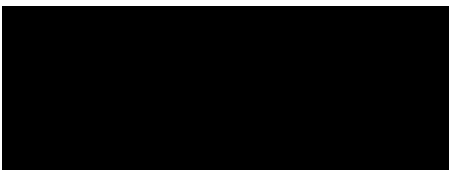
15. There has been no response to the request for further information but given the issues with the notice to quit and AT6 in accordance with the overriding objective I am rejecting this application for the foregoing reasons.

NOTE: What you should do now.

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.



Lesley Anne Ward

Legal Member