Housing and Property Chamber
First-tier Tribunal for Scotland

DECISION AND STATEMENT OF REASONS OF NEIL KINNEAR, 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 (Procedure) Regulations 2017 as amended ("the Rules")

in connection with

52 Muir Street, Larkhall, ML9 2BQ

Case Reference: FTS/HPC/EV/19/2424

SCOTT BUILDING SERVICES ("the applicant")

MR PETER McFARLANE ("the respondent")

1. On 2nd August 2019, an application was received from the applicant via its representative. The application was made under Rule 65 of the Rules, being an application by a private landlord for possession of rented property let under an assured tenancy. The following documents were enclosed with the application:-

   (a) Copy Assured Tenancy Agreement;

   (b) Copy Notice to Quit;

   (c) Copy Form AT6;

   (d) Copy s.11 Notice;

   (e) Proof of service; and

(f) Copy Rent Account Statement.

DECISION

2. I 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;

(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."

3. After consideration of the application, the attachments and correspondence from the applicant's representative, I consider that the application should be rejected on the

basis that it is frivolous within the meaning of Rule 8(1)(a) of the Rules.

REASONS FOR DECISION

4. '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".* It is that definition which I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived, and has no prospect of success.

5. The notice to quit, which is dated 10th July 2019 and was served on the Respondent by sheriff officers on 11th July 2019, is invalid in respect that it specifies a date to leave the premises of 26th July 2019, a period of notice of only 15 days. That termination date is also not an *ish* of the tenancy agreement, as that date is required to be in order to constitute an effective notice to end the lease other than upon the grounds of an irritancy. The Assured Tenancy Agreement states at paragraph 2 that the tenancy commences on 20th September 2007 and ends on 20th October 2007, and monthly thereafter. Accordingly, the *ish* of the lease has not yet been reached, insufficient notice has been given, and the notice is ineffectual unless it is served in accordance with the lease agreement at a date prior to the *ish* for the purposes of ending the lease in terms of an irritancy clause.

6. The lease agreement provides at clause Eighteenth (Termination), that the contractual tenancy may be ended “By the Landlord giving the Tenant one month’s notice and, subsequently, obtaining an order for recovery of possession from the Sheriff Court on one or more of the following grounds contained in Schedule 5 of the Housing (Scotland) Act 1988:”. The clause goes on to narrate those grounds.

7. The contractual provision, therefore, provides for the landlord to terminate the lease by giving the tenant one month's notice, and subsequently by obtaining an order for recovery of possession. As above noted, the notice to quit given to the tenant here gave only 15 days' notice, and is accordingly ineffectual.

8. It has been held by the Scottish courts in the cases of *Royal Bank of Scotland v Boyle* 1999 Hous LR 63 and *Eastmoor LLP v Bulman* 2014 G.W.D. 26-259, that a lease may only be brought to an end prior to its *ish* if there is a statutory or conventional irritancy, and that section 18(6) of the *Housing (Scotland) Act 1988* is in effect a provision *anent* conventional irritancies the purpose of which is to restrict the conventional irritancies to the grounds set out in section 18(6)(a). For that reason, the tenancy agreement must provide for it to be brought to an end on the ground in question, being a ground in schedule 5 to the 1988 Act specified in section 18(6)(a), and the provisions in the lease agreement regarding termination must be followed.

9. In this case, the applicant has not followed the contractual provision, as it has failed to give sufficient notice to the tenant in terms of clause Eighteenth prior to obtaining an order for possession.

10. For these reasons, the Applicant cannot rely on the notice to quit either to bring the lease to an end at its *ish*, nor to bring it to an end prior to its *ish* in terms of its provisions relating to irritancy, and accordingly this application has no prospect of success and must be rejected upon 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.

Neil Kinnear

Neil Kinnear
Legal Member
14th August 2019