



Decision with Statement of Reasons of Alan Strain, 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/21/1528

Re: 4B Delta Road, Musselburgh, EH21 8EX ("the Property")

Parties

Ms Sally Turnham (Applicant)
Ms Sadie Ralton (Respondent)

Garden Stirling Burnet (Applicant's Representative)

Tribunal Member:

Alan Strain (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined 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 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 25 June 2021. The following relevant documents were enclosed with the application:

- (i) SAT commencing 17 October 2017 and ending 16 April;
- (ii) Notice to Quit dated 14 December 2020 which specified 16 June 2021 as the date to quit;
- (iii) Section 33 Notice;
- (iv) Section 11 Notice to local authority;
- (v) AT5.

2. The application was considered by the Tribunal and further information was requested by letter of 13 July 2021 as follows:

“Could you please explain to the Tribunal the basis for your submission that the 16th June 2021 is an ish date of the lease. The lease agreement appears to provide that it commenced on 17th October 2017 and terminated on 16th April 2018. There does not appear to be any provision for it to continue on a monthly basis thereafter, and it would appear that tacit relocation would therefore operate consecutively for the original term of the lease..”

3. The Applicant responded on 27 July 2021 informing the Tribunal:

“Further to the below, the notice was served on the proviso that the tenant had a full six months’ to vacate. As such, she was still given the required two months’ notice before the ish date (16th April 2021) as the notice was served last December and was given an extra two months to accommodate for the six month notice period required.”

Reasons for Decision

4. 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 application seeks to proceed under Rule 66. In order to do so the tenancy must have been validly terminated at its ish. The tenancy was for a period of 6 months from 17 October 2017 and ending 16 April. It renewed each year for a further 6 month period by tacit relocation. The Notice to Quit does not coincide with the ish date of the tenancy.

The tenancy has not been validly terminated and continues. As the tenancy has not been terminated the Tribunal cannot grant the order sought.

7. In light of the above reasons the Tribunal cannot grant the order sought. 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. Furthermore, the Tribunal consider that there is good reason why the application should not be accepted. 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 them.

Alan Strain

6 August 2021

Legal Member/Chair

Date