



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/22/1004

Re: 22 Anderson Street, Hamilton, ML2 0QN ("the Property")

Parties:

Bernadette McPake and Peter McPake ("the Applicant")

Margaret Davies and William Davies ("the Respondent")

Tribunal Member:

Ms 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 and that it would not be appropriate to accept the application in terms of Rule 8(1)(c).

Background

1. An application was received by the Tribunal under Rule 66 on 6th April 2022. The Applicant was seeking an order for possession. The Applicant's representative lodged three short assured tenancy agreements in respect of the Property, the first commencing on 6th November 2015 for a period of six months, the second commencing on 20th May 2016 until 19th November 2016, and the third commencing on 6th November 2016 until 5th November 2017. The representative also lodged Forms AT5, a Notice to Quit dated 22nd September 2021 requiring the Respondents to quit by 5th April 2022 and a Section 33 notice with the same dates, certificates of posting and email delivery receipt dated 23rd September 2021, and section 11 notice and email delivery receipt.
2. The application was considered by the Tribunal and further information was requested by letter dated 22nd April 2022, with a response required by 6th May 2022, as follows:

- You have submitted three separate tenancy agreements with this application. Each of the agreements bear to be short assured tenancy agreements each with a different commencement date.
- You have provided a copy of an undated and unsigned form AT5. In order to create a short assured tenancy it is a legal requirement that an AT5 form is served on each joint tenant. Can you please provide a copy of a dated and signed form AT5 with evidence of service of that form upon each joint tenant. If such a form has not been served then please explain the basis that you believe that the tenancy is a short assured tenancy in terms of the Housing (Scotland) Act 1988.
- You have submitted copies of what appear to be a notice to quit and a notice under section 33 which both appear to be addressed to the joint tenants together. There is no evidence that each joint tenant has been served with these notices. It is a requirement that the notice to quit and the notice under section 33 are served upon each joint tenant individually. Can you confirm whether you proceeded to serve each tenant individually with copies of these notices. If so please provide evidence of the method of delivery of the notices to each of the tenants.
- The section 33 notice indicates that the notice is being given in terms of the tenancy agreement between the parties which commenced on 6 November 2015. Please confirm why you believe that the tenancy agreement which started on that date has not been superseded by the two subsequent tenancy agreements apparently entered into between the parties dated 20 May 2016 and 6 November 2016.
- In the notice to quit which has been provided it is indicated that the tenants require to quit the premises by 5 April 2022. Can you explain why you believe that the date selected complies with the relevant legislation and provides appropriate notice to the tenants? The notice to quit does not appear to specify a removal date which is an ish date of the tenancy.
- The required notice in terms of section 11 of the Homelessness etc. (Scotland) Act 2003 appears to have been sent to the South Lanarkshire Council Tax office, it should have been sent to homelessness.strategy@southlanarkshire.gov.uk Please confirm that this notice has been received by the appropriate department within the council.
- An email delivery receipt for an email sent to the one of respondent on 23 September 2021 was submitted with the application but not the email itself. Please provide details.

3. By email dated 6th May 2022, the Applicant representative replied as follows:

1. I sent all the PRT leases , the tenants moved the date to suit there wage dates

2. sorry I thought you only needed to see the lease , I can resend the last lease dated the 6th November 2016 , with the AT5 form (the tenant moved in on the 6th November 2015 and the lease was a short assured lease , the tenant was asked to sign a new PRT lease on November 2019 , however Covid hit and this was not signed , I submitted this last august , however this was not valid due to the tenants not signing and I have to give notice again , the tenant had still not moved out as he has advised that South Lanarkshire Council need to get a date from the FTT before offering the tenants a council house

3. This was not served to both Tenants , as they are a married couple and all corospondance I done thought Mr William Davies

4. the date when the tenancy started was on the 6th November 2015

5. the lease for the property stated on the 6th November 2015 , this is why the notice was ending on the 5th , the tenant was previously given

6. Yes I can confirm this has been sent to the homeless team

7. please see attached

The tenant was contracted on Feb 2021 to inform them the landlord had health issues and had been very ill and he needed to sell the property , the tenants were issues with 6 months notice , the tenant advised that you wanted to move to a council property and wouldn't be offered a house until the First tier trubunal gave them a date ? they would then inform South Lanarkshire council and be offered a house , the PRT lease was found to be not valid as it was not signed by the tenants I then issues another 6 months , so the tenants have over a year now to find a new property , the tenants have told us , they want to move out but need a date to provide this to the Council

4. The application was considered by the Tribunal and further information was requested by letter dated 27th May 2022 with a response requested by 10th June 2022, as follows:

You have confirmed that the tenancy agreement dated 6 November 2016 is the current agreement and provided an AT5 Notice. Please note the following:

1. You have provided a post office receipt and an email receipt. You have also stated that the Notices were only sent to Mr Davies. As previously advised, the Notices must be served on both tenants or the application cannot proceed. Please clarify the position. If the Notices were sent

recorded delivery addressed to both tenants you must provide evidence of delivery, such as a track and trace report.

2. You have not addressed the issue raised about the validity of the Notice to Quit. The tenancy provides for an initial term of 6 November 2017 to 5 November 2017. There does not appear to be the usual provision for it to continue on a monthly basis after this. It therefore appears that the ish or end date of the tenancy is 5 November each year after the initial term. If so, the Notice to quit is not valid as it asks the tenant to remove from the property on 5 April. Please clarify the position regarding this notice. You should note that if the notice is not valid, the application cannot be accepted. You may wish to withdraw the application and re-submit it after service of valid notices on both Respondents.

No response was received from the Applicant representative.

5. By email dated 8th July 2022, a further opportunity was provided to the representative to respond to the letter dated 27th May 2022, by 15th July 2022, failing which the application may be rejected. No response was received from the Applicant representative.
6. The application was considered further on 17th August 2022.

Reasons for Decision

7. 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.

8. '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".

9. The application cannot proceed in the absence of the requested information. The Notice to Quit does not appear to be valid as it has not been served to an ish date of the tenancy, and there appears to be a defect in service.
10. 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. It would not be appropriate to accept the application. 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.



Legal Member/Chair

17th August 2022
Date