



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/21/0823

Re: 82 Mansfield Road, Bellshill, ML4 3AQ ("the Property")

Parties

Mr John Mitchell (Applicant)

Miss Ashley Leblond (Respondent)

Premier Properties (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 on 1 April 2021. The grounds for possession/eviction were stated to be termination of a Short Assured Tenancy (**SAT**) under section 33 of the **Housing (Scotland) Act 1988 (Act)**. The following documents were enclosed with the application:

- (i) SAT commencing 27 October 2015 until 26 April 2016;
- (ii) AT5 dated 27 November 2015;
- (iii) Section 33 Notice dated 24 August 2020;
- (iv) Notice to Quit dated 24 August 2020 which specified 26 February 2021 as the date to quit;
- (v) Section 11 Notice to local authority.

2. The application was considered by the Tribunal and further information was requested by letter of 10 March 2021 as follows:

“ Before a decision can be made, we need you to provide us with the following:

- 1. Please provide written authority from the applicant that you are instructed by them to act for them in this matter.*
- 2. Please provide a valid notice to quit together with evidence of service of the notice to leave.*
- 3. If you are seeking to rely on the notice to quit attached to the lease agreement please provide your views on the validity of this notice, given that it does not contain the prescribed information as required by The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 ; and further it does not terminate the tenancy on the ish date of the lease.*
- 4. Please provide your comments on the validity of the creation of the tenancy agreement as a short assured tenancy; given that the tenancy agreement advises that the term commenced on 27 October 2015; however the AT5 Notice was signed and issued on 24 November 2015. In order to create a valid SAT the AT5 Notice has to have been given to the tenant prior to the creation of the tenancy; and the tenancy requires to have been granted for an initial period of at least 6 months.*
- 5. Please provide evidence of service of the section 11 notice.*
- 6. Please provide evidence of service of the section 33 notice.*

Please reply to this office with the necessary information by 3 May 2021. If we do not hear from you within this time, the President may decide to reject the application.”

3. The Applicant did not respond. The Tribunal wrote to the Applicant again by email of 17 May 2021 in the following terms:

“I refer you to our letter of 19 April 2021 (copy attached for your reference) to which you have not yet responded. The tribunal has allowed a further 7 days for response to the points outlined within. Please reply to this office with the necessary information by 24 May 2021. If we do not hear from you within this time, the President may decide to reject the application.”

4. No response was received.

Reasons for Decision

5. 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."

6. '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*".

7. The application seeks to proceed under Rule 66 and Section 33 of the Act. In order to do so the tenancy must have been a short assured tenancy validly terminated at its end. The AT5 was not served on the tenant until after the creation of the tenancy. The tenancy is not a short assured tenancy and cannot be terminated under section 33. Furthermore, the notice to quit is invalid in that it does not contain the prescribed information as required by ***The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988*** and it does not terminate the tenancy on the end date of the tenancy. The Applicant has also failed to produce evidence of service of the notice to quit, section 33 notice and section 11 notice.

The tenancy has not been validly terminated and continues. 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

Legal Member/Chair

Date 10 June 2021