



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/22/0996

Re: Flat 1A, 27 Neilston Road, Paisley, PA2 6LU ("the Property")

Parties

Mr Ian Lawson (Applicant)

Ms Sharon Robertson (Respondent)

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 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. The application was received by the Tribunal under Rule 65 on 5 April 2022.
2. The application was considered by the Tribunal and further information was requested by letters of 3 May 2022 and 9 June 2022. The Applicant was asked to:

"Before a decision can be made, we need you to provide us with the following: 1. Please clarify which rule you are relying on as you have selected Rule 65 but lodged a section 33 notice which is only required for rule 66. 2. If you wish to proceed under Rule 65 please note the following – (a) Please clarify the ground for possession as "landlord intends to sell the let property" is not a valid ground for assured tenancies in terms of the Housing (Scotland) Act 1988. (b) You have submitted an AT6 notice but

this is dated 1 April 2022 and therefore does not appear to give any notice to the Respondent. Please note that the notice period will depend on the eviction ground. It therefore appears that the application is premature. The AT6 notice also appears to be invalid as it does not specify valid ground for possession under the 1988 Act. Please advise if you wish to withdraw the application and re-submit it once a valid AT6 notice has been served or confirm if you are asking the Tribunal to dispense with service of the AT6 notice. Please note that this option is not available for all grounds and you will require to satisfy the Tribunal at the hearing that it is reasonable to do this. (c) Evidence must be submitted in support of the eviction ground 3. If you wish to proceed under Rule 66 (termination of a short assured tenancy) please provide evidence of service of the notices. Please also note that the Notice to Quit appears to be invalid as the date specified does not coincide with an ish date. A valid notice to quit is required before the application can proceed under this Rule. 4. For both Rules, a copy of the section 11 notice sent to the Local Authority is required together with evidence that it was sent to the Local Authority. 5. Please note that the Notice to leave you have submitted is not a valid notice for applications relating to assured tenancies."

3. The information was not received.

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. Rule 65 provides for certain information to be supplied with an application:

Application for order for possession in relation to assured tenancies

65. Where a landlord makes an application under section 18(1) (orders for possession) of the 1988 Act, the application must—

(a)state—

(i)the name, address and registration number (if any) of the landlord;

(ii)the name, address and profession of any representative of the landlord;

(iii)the name and address of the tenant; and

(iv)the possession grounds which apply as set out in Schedule 5 of the 1988 Act;

(b)be accompanied by—

(i)a copy of the tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;

(ii)a copy of the notice served on the tenant by the landlord of intention to raise proceedings for possession of a house let on an assured tenancy;

(iii)a copy of the notice to quit served by the landlord on the tenant (if applicable); and

(iv)evidence as the applicant has that the possession ground or grounds has been met; ...

(v)a copy of the notice given to the local authority by the landlord under section 11 of the Homelessness (Scotland) Act 2003 (if applicable), and

(vi)a copy of Form BB (notice to the occupier) under schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (if applicable), and

(c)be signed and dated by the landlord or a representative of the landlord.

The applicant failed to produce evidence to support the application that had been requested such as the notice under section 11 of the Homelessness (Scotland) Act 2003 and a valid Notice to Quit. The application could not proceed.

7. 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

20 July 2022

Legal Member/Chair

Date