



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/22/2452

Re: 38 Stormont Road, Scone, Perth, PH2 6NT ("the Property")

Parties:

Michael Hoyle ("the Applicant")

Premier Properties Perth ("the Applicant representative")

Claire Rowan ("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. The application was received by the Tribunal from the Applicant representative under Rule 66 on 20th July 2022 with copy Notice Quit, Section 33 Notice, Section 11 notice, pre-action requirement letters and evidence of service of notices.
2. The application was considered by a legal member of the Tribunal and by letter dated 24th August 2022, the following information was requested from the Applicant representative:

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

1. Please provide an address for the Applicant, a c/o address cannot be used.

2. Please provide a copy of the tenancy agreement. You have only submitted the AT5 and other notices

Please reply to this office with the necessary information by 7th September 2022. If we do not hear from you within this time, the President may decide to reject the application.

3. By email dated 24th August 2022, the Applicant representative replied providing the Applicant address and stating that, due to the age of the tenancy, no copy of the tenancy agreement could be found.
4. The application was considered by a legal member of the Tribunal and by letter dated 3rd October 2022 the following information was requested from the Applicant representative:

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

1. Please provide the start date, initial end date, information about the notice period set out in the tenancy agreement, arrangements in place if the initial duration of the tenancy came to an end. The Tribunal must be able to ascertain when the ish date for the tenancy was and whether or not the Notice to Quit was issued to an ish date. If you cannot provide this the application may have to be rejected.

2. Please provide proof of service for the Notice to Quit and the S 33 notice Please reply to this office with the necessary information by 17 October 2022.

If we do not hear from you within this time, the President may decide to reject the application.

5. By email dated 4th October 2022, the Applicant representative replied as follows:

- Start date of lease was 12/02/2011
- Initial end date was 13/08/2011
- The tenant was required to give 1 months' notice to end the tenancy. The landlord was required to give 2 months' notice.
- If neither party ended the tenancy before the initial term came to an end, the tenancy would continue indefinitely until either party gave the correct notice.

The Notice to Quit and Section 33 documents were hand delivered at the property by Alan Keddie, director of Premier Properties Perth. The tenant invited him in at the time and they spoke through the notice at

length in person. The respondent will no doubt confirm this was the case if asked.

6. The application was considered by a legal member of the Tribunal and by letter dated 9th November 2022, the following information was requested from the Applicant representative:

You stated that the tenancy agreement cannot be found but that the initial end date was set as 13 August 2011. The Notice to Quit is issued to 15 July 2022. Please explain how you calculate that 15 July 2022 is a valid ish date for the tenancy. If tacit relocation applied the date would be always 6 months and one day after the previous valid ish date and it would only be for those dates the 2 months' notice period would be relevant. You may wish to obtain legal advice in the matter. Please clarify your position. If you could locate the original lease this would be of great assistance.

Please reply to this office with the necessary information by 23 November 2022. If we do not hear from you within this time, the President may decide to reject the application.

7. By email dated 9th November 2022, the Applicant representative responded as follows:

We still do not have a copy of the short assured tenancy agreement.

The 'ish' date is calculated by using the end date which is the 13th of the month, plus 2 days' grace period for the notice to be received. I know normally you only need to give 1 day, but we gave 2 to give the tenant a more generous timescale with an extra day.

So 2 months 'notice, plus 2 days' grace period from 13th of the month, brings the date to 15th of the month.

8. The application was considered by a legal member of the Tribunal and by letter dated 7th December 2022, the following information was requested from the Applicant representative:

You indicated in your email of 4 October 2022 that the initial term of the tenancy was 12 February 2011 to 13 August 2011. You have advised that if neither party terminated the tenancy the tenancy was to continue. Unless there is any provision to the contrary, the tenancy must have renewed by tacit relocation, on the same terms as the initial term. That being so, the tenancy renewed for successive periods of 6 months and 1 day. We note from your email of 9 November that you consider that the 13th day of the month is the end date, but it is not clear why you consider that to be the case. From the information provided, this was not a tenancy which continued on a monthly basis. We also note that you

have added 2 days to what you consider to be the ish date. The ish date is a definitive date on which the tenancy ends. There does not appear to be any legal basis for adding 2 days to the ish date. Given the observations above, the Notice to Quit may be invalid. Please provide your detailed comments as to why you consider that your application should be accepted. Alternatively, please advise whether you wish to withdraw the application in order to serve a new Notice to Quit. We reiterate that you may wish to consider taking legal advice or consult a housing advisory service before you respond.

Please reply to this office with the necessary information by 21st December 2022. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

9. The application was considered by a legal member of the Tribunal and a further email was sent dated 11th January 2023 to the Applicant representative providing a further opportunity to provide the requested information, requesting a response by 25th January 2023, failing which the application may be rejected. No response was received.

10. The application was considered by a legal member on 17th February 2023.

Reasons for Decision

11. 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."

12. '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".

13. The Notice to Quit appears to be invalid as it does not end the contractual tenancy on an ish date of the tenancy. The contractual tenancy persists and no order could be granted under Rule 66 and section 33 of the Housing (Scotland) Act 1988 as the short assured tenancy has not reached its finish and tacit relocation is in operation.
14. 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 futile, misconceived and hopeless.
15. There is good reason to believe that it would not be appropriate to accept the application.
16. 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.

H Forbes

Legal Member/Chair

17th February 2023
Date