



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/21/0693

Re: 744 Pollockshaws Road 3-2, Glasgow, G41 2AE ("the Property")

Parties

Mr Zahid Shafi (Applicant)
Mrs Aurelia Hendrea (Respondent)

G4 Properties (Glasgow) Ltd (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 18 March 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)**.
2. The application was considered by the Tribunal and further information was requested by letter of 30 March and 26 April 2021 in the following terms.

"Before a decision can be made, we need you to provide us with the following: (1) On page one, you have ticked "Rule 66", which is an application for possession upon termination of a Short Assured Tenancy. However, it appears that you are seeking possession on one of the Grounds to Schedule 5 of the 1988 Act, on the basis of rent arrears. You should therefore tick Rule 65 on the first page, if this is the basis upon which wish to proceed. (2) It is also noted that in Section 5, the wrong ground is noted

for a Short Assured Tenancy (Ground 12 does not relate to rent arrears. Please consider ground 8 (to which you have referred in your Section 19 notice) and if you wish to proceed on this basis, please amend Section 5 of the Application. (3) It is noted that there is only one Respondent named on the Application, but there are two tenants on the Short Assured Tenancy. If you wish to add a second Respondent please produce a paper apart with the second respondent's details. Please reply to this office with the necessary information by 13 April 2021. If we do not hear from you within this time, the President may decide to reject the application."

No response was received.

3. The application was again considered by the Tribunal and the Tribunal wrote again on 19 May 2021 giving the Applicant until 26 May 2021 to provide the requested information and informed that if it was not provided 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. Rule 66 provides for certain information to be produced in support of the application.

The Applicant has been unable to provide the information requested by the Tribunal.

8. 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

10 June 2021

Legal Member/Chair

Date