

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision 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/18/0065

Re: Flat 3, 16 John Street, Helensburgh, Argyle and Bute, G84 8BA ("the Property")

Parties:

AMPG Ltd T/A Ahuja Holdings ("the Applicant")

Mr Richard Matthews, of RJM Property Service Ltd., U1 South Fens Business Centre, Fenton Way, Chatteris, Cambridgeshire, PE16 6TT ("the Applicant's Representative").

Percy Elsey, Flat 3, 16 John Street, Helensburgh, Argyle and Bute, G84 8BA ("the Respondent")

1. On 8 January 2018, an application was received from the Applicant. The application was made under Rule 65 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under an assured tenancy. The application also seems to make reference to termination in terms of s.33 of the Housing (Scotland) Act 1988 ('the 1988 Act') (on the basis that the tenancy is a short assured tenancy), although this is not clearly set out. The following documents were enclosed with the application:-

- (i) Short Assured Tenancy Agreement;
 - (ii) Form AT5;
 - (iii) Notice to Quit;
 - (iv) Section 33 Notice;
 - (v) Notice to Local Authority section 11 Notice;
 - (vi) Form AT6;
 - (vii) Arrears statement; and
 - (viii) Proof of postage document.
2. The tenancy agreement is executed on behalf of the Applicant by its agent, Mr Richard Matthews, who is also the Applicant's Representative in this application.
 3. By letter dated 31 January 2018, a request for further information was sent to the Applicant's Representative, indicating that further clarity in relation to the grounds relied upon for eviction was required. A deadline of 14 February 2018 for response to this letter was indicated, with the possibility that failure to reply might result in rejection of the application being explained. No response has been received as at the date that I am considering the application (9 April 2018).
 4. In accordance with the normal sifting procedure, the Tribunal Administration has obtained a copy of the Land Certificate for the Property, which indicates that it is owned by Mr Ajay Ahuja, in a personal capacity, and not the Applicant.

DECISION

5. I have considered the application 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;
- (b) the dispute to which the application relates has been resolved;

- (c) they have good reason to believe that it would not be appropriate to accept the application;
- (d) they consider that the application is being made for a purpose other than a purpose specified in the application; or
- (e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(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."

After consideration of the application, I consider 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.

REASONS FOR 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". It is that definition which I have applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, in the sense of being misconceived and hopeless.
7. I do not consider that it is possible for the Applicant to have executed a valid tenancy agreement in relation to the Property, since it does not own the Property and did not own it at the time the tenancy documents were signed by the parties. On that basis, the application is fundamentally misconceived and is hopeless.

8. Separately, the Applicant has failed to respond to the request for further information dated 31 January 2018. This means that the application must be taken to be made in terms of rule 65, seeking an order in terms of s.18 of the 1988 Act. On that basis, the application is also bound to fail on the grounds that the relevant AT6 had expired before the date upon which proceedings were raised.

What you should do now:-

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:-

An applicant aggrieved by the decision of the Chamber President, or any Member acting under delegated powers, 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 of the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

N Young

9 APRIL 2018

Legal Member/ Chair

Date