



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/21/0370

Re: Property at 69B Polton Street, Bonnyrigg, EH19 3DQ (Property)

Mr Angus Riddle, Mrs Katherine Riddle (Applicant)

Ms Maureen Innes (Respondent)

1. On 19 February 2021 an application was received from the Applicant. The application was made under Rule 66 of the Tribunal’s Procedural Rules being an application by a private landlord for possession of rented property let under a Short Assured Tenancy. The following documents were enclosed with the application:-
 - (i) Tenancy Agreement;
 - (ii) Form AT5;
 - (iii) Section 33 Notice; and
 - (iv) Notice to Quit.
2. The Tenancy Agreement was in the name of the Applicant and the Respondent. There was an AT5 Form attached. The Tenancy Agreement had a section defining “term” and it provided that the lease ran from 28 April 2017 until 28 October 2019 and it would continue on a monthly basis thereafter. The Notice to Quit was dated 10 March 2020 and advised the tenant to quit the property on 29 May 2020. A Section 33 Notice was also submitted it was also dated 10 March 2020 and advised the tenant to quit the property on 29 May 2020.

DECISION

3. 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.”

4. 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

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. 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, misconceived and has no prospect of success.

6. Section 33 of the 1988 Act provides as follows:-

33 - Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First –Tier Tribunal may make an order for possession of the house if satisfied that—

(a) that the short assured tenancy has reached its ish;

(b) That tacit relocation is not operating;

...

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house. And

....

7. The application was made under rule 66 of the Procedural Rules “*application for possession upon termination of a short assured tenancy*”. The rules narrate that any application requires to be accompanied by a notice under section 33 of the Housing (Scotland) Act 1988; and a Notice to Quit served by the landlord on the tenant. The notice to quit requires to bring the contractual tenancy to an end on the ish date. The ish date in this case appears to be 28th of each month. In my opinion the Notice to Quit which was served on the tenant and which has been submitted with the application is not therefore valid. Accordingly, the contractual tenancy has not been brought to an end and tacit relocation is still operating.
8. To recover possession of a short assured tenancy under section 33 of the 1988 Act, the tribunal must be satisfied that the requirements of this section are met. In this case the statutory requirements have not yet been met, as the notice to quit did not terminate the contractual tenancy on the ish date. For the reasons set out above, the statutory requirements have not been met, and therefore the application is frivolous and should be rejected.

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.

Melanie Barbour
Legal Member/Chair

19.03.2021

Date