



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/18/1046

Re: 82 Cardowan Road, Carntyne, Glasgow, G32 6QP ("the Property")

Parties:

Mr Stephen David McCullagh ("the Applicant")

Mrs Elizabeth Dickson ("the 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 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 3 May 2018. The grounds for possession/eviction were stated to be Grounds 8 and 12 of the Housing (Scotland) Act 1988 (Schedule 5). The following documents were enclosed with the application:
 - (i) An unsigned Rental Agreement addressed to the Respondent in respect of the Property which stated it was for a term of 6 months (with the commencement date blank), was a short assured tenancy, and was signed by the Applicant on 1 August 2008;
 - (ii) Form AT5 dated 1 August 2008;

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- (iii) Sample Notice to Quit addressed to the Respondent and signed by the Applicant, dated 10 April 2018. The Notice to Quit did not specify the date by which the Respondent had to quit;
 - (iv) Section 33 Notice signed and dated by the Applicant on 10 April 2018 giving notice to the Respondent to remove on or before 25 April 2018;
 - (v) Section 11 Notice to Glasgow City Council undated which stated the start date of the tenancy as 1 August 2008 and the date of raising proceedings as 25 April 2018;
 - (vi) Form AT6, signed and dated 10 April 2018, addressed to the Respondent advising that the Applicant was seeking possession under Grounds 8 and 12 of the Housing (Scotland) Act 1988 Schedule 5 and which did not contain a date before which proceedings would not be raised;
 - (vii) Certificate of posting dated 11 April 2018; and
 - (viii) Royal Mail track and trace dated 12 April 2018.
2. On 14 May 2018 the application was considered by the Tribunal and a request for further information issued on the same date. The Applicant was requested to provide the following:
- (i) Whether the application was under Rule 66 or Rule 65;
 - (ii) Dates of the Tenancy;
 - (iii) Which documents the track and trace receipt referred to;
 - (iv) What the Applicant's position on the notice period under section 33 was;
 - (v) What the date of removing was in the Notice to Quit;
 - (vi) Whether the copy of the Rental Agreement provided was complete and had been signed by the Respondent; and
 - (vii) Confirm the AT6 did not have a date before which proceedings would not be raised.

The Applicant was requested to provide the information by 28 May 2018 failing which the application may be rejected.

3. The Applicant responded by email of 27 May 2018 in which he advised:
- (i) The application was being pursued under Rule 66;
 - (ii) Enclosed the original signed Rental Agreement signed by the respondent and with the date of commencement stated as 1 August 2008;
 - (iii) Enclosed a version of the Notice to Quit which stated the date to quit the property as 25 April 2018;
 - (iv) That the track and trace receipts referred to service of the notice to quit, rental agreement, section 33 Notice, breakdown of rental payments, AT5, AT6; and
 - (v) Only 2 weeks' notice was required under section 33.

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

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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. An application under Rule 66 requires specified documentation to be lodged with it:

"Application for order for possession upon termination of a short assured tenancy

66. Where a landlord makes an application under section 33 (recovery of possession on termination of a short assured tenancy) 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; and
(iii) the name and address of the tenant;

(b) be accompanied by a copy of—

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

(ii) the notice by landlord that the tenancy is a short assured tenancy; and

(iii) the notice given to the tenant under section 33(1)(d) of the 1988 Act; and

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

7. Section 33 of the Housing (Scotland) Act 1988 provides:

"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 shall make an order for possession of the house if the Tribunal is satisfied—*

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

(b) *that tacit relocation is not operating; and*

(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.

(2) The period of notice to be given under subsection (1) (d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.”

8. In this application the section 33 Notice was served with notice of only 15 days. The section 33 Notice is accordingly invalid. The Tribunal would not be able to grant the Order sought. No valid section 33 Notice having been served then the application does not meet the requirements of Rule 66. 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 application not being accompanied by a valid section 33 Notice 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.

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Legal Member/Chair

Date

31 MAY 2018