



**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/23/4342**

**Re: 92 Turnhouse Road, Edinburgh, EH12 8ND ("the Property")**

**Parties**

**Mr James Somerville (Applicant)**

**Ms Kyla Saunders (Respondent)**

**Mr Colin Stewart (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.**

**Background**

1. The application was received by the Tribunal originally under Rule 65 on 5 December 2023. The grounds for possession/eviction were stated to be Ground 1 of Schedule 5 to the Housing (Scotland) Act 1988 (**Act**). The following relevant documents were enclosed with the application:

- (i) Short Assured Tenancy (**SAT**) commencing 6 November 2014 for a period of 6 months;
- (ii) Notice to Quit dated 1 August 2023 specifying that the tenancy would terminate on 15 September 2023;

- (iii) AT6 dated 1 August 2023 specifying the grounds for possession as being Ground 1, and that the earliest date for raising proceedings was 5 November 2023.

2. The application was considered by the Tribunal and further information was requested by email of 3 April 2024:

*“The Notice to Quit does not appear to have been served to an ish date of the tenancy, which commenced on 6th November 2014 for a period of 6 months. On the limited information provided, there is no evidence of whether the tenancy continued on a monthly basis after the initial term, or whether the terms of the tenancy agreement would allow you to proceed without a Notice to Quit under section 18(6) of the Housing (Scotland) Act 1988. In the circumstances, there are very limited prospects of having the order granted. Please consider whether you wish to withdraw the application or provide your written representations setting out a legal position that would allow the application to be accepted by the Tribunal. “*

3. The Applicant replied by email of 16 April 2024 in the following terms:

*“All available information has been provided to the HPC. If the application is refused on the basis of an assumption about the termination date, is there another/different HPC pathway to submit a further application given that the available information will be no different? The tenant and landlords are all in agreement with the application being made to the chamber; the tenant specifically requires an eviction order to unlock access to local authority services that may be able to offer affordable housing in the school catchment area. “*

### **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*

*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. The application seeks to proceed under Rule 65 using Ground 1 of Schedule 5 to the Act. In order to rely upon these Grounds the Applicant must have validly terminated the SAT. The commencement date of the tenancy was 6 November 2014 for a period of 6 months. It continued by tacit relocation on a 6 monthly basis thereafter. The Notice to Quit states 15 September 2023 as the date by which the Respondent should quit and remove. 15 September 2023 was not an "ish" of the tenancy. The tenancy was not validly terminated at its "ish" and continues as a consequence.

7. The Tribunal considered whether the application could still proceed in terms of Section 18(6) of the 1988 Act. This states *"The First tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless – (a) the ground for possession is ground 2 or ground 8 in Part 1 of Schedule 5 to the Act or any of the grounds in Part II of that schedule, other than ground 9, ground 10, ground 15 or ground 17; and (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question"*. In **Royal Bank of Scotland v Boyle 1999 HousLR** it was held that, where an invalid Notice to Quit had been served and the Pursuer sought to rely on Section 18(6) of the Act, *"(1) that the essential ingredients of the grounds for recovery of possession in Schedule 5 to the 1988 Act must be referred to in the tenancy agreement, and while this could be done by an exact citation of the grounds, and maybe also by providing a summary containing the essential ingredients of the grounds, incorporation by reference would not necessarily be appropriate"*. The Tribunal notes that the SAT which has been produced does not refer to or incorporate the grounds for possession relied upon in the application, as required by Section 18(6). As a result the Applicant has failed to meet the requirements of section 18(6) and cannot proceed under this section. In order to raise proceedings for recovery of the property the Applicant must first bring the contractual tenancy to an end. The Notice to Quit which has been lodged is invalid and does not bring the contractual tenancy to an end. Accordingly, the Applicant has not complied with the requirements of the legislation and the application cannot succeed.

8. 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. 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.**

# A Strain

9 May 2024

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Legal Member/Chair

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Date