

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**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/20/0261**

**Re: 31 Garden Square Walk, Airdrie, ML6 0HY ("the Property")**

**Parties:**

**J & M McDonald Properties ("the Applicant")**

**Mr Robert Duffy ("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 originally under Rule 65 on 25 January 2020. The grounds for possession/eviction were stated to be Ground 8 of Schedule 5 to the Housing (Scotland) Act 1988 (Act). The following documents were enclosed with the application:

- (i) Short Assured Tenancy (**SAT**) commencing 20 August 2012 until 19 August 2014 continuing thereafter month to month;
- (ii) AT5 dated 20 August 2012;
- (iii) Notice to Quit dated 14 November 2019 and specifying 14 January 2020 as the date to quit;

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- (iv) Section 33 Notice dated 14 November 2019 specifying 14 January 2020 as the date of termination of the tenancy;
- (v) Royal Mail Track and Trace;
- (vi) Section 11 Notice to local authority.

2. The application was considered by the Tribunal and further information was requested by letter of 18 February 2020. In particular the Applicant was requested to comment on the validity of the Notice to Quit and whether or not the Applicant wished to amend to an application under Rule 66. The Applicant responded by email of 5 March 2020 confirming the wish to amend to an application under Rule 66 and asserting that the Notice to Quit was valid as it gave the Respondent two months' notice.

### Reasons for Decision

3. 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."*

4. '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".

5. The application seeks to proceed under Rule 66. In order to do so the tenancy must have been validly terminated and tacit relocation not be operating. The ish date of the tenancy is the 19th day of every month. The Notice to Quit and section 33 Notice both stated 14 January 2020 as the ish date which was patently wrong. The tenancy was not terminated and tacit relocation continues to operate.

6. 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.

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## 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

19 March 2020

Legal Member/Chair

Date