



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,  
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED  
POWERS OF THE CHAMBER PRESIDENT**

**Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property  
Chamber Rules of Procedure 2017 ("the Rules")**

**in connection with**

**8D Kirk Ports, North Berwick, East Lothian EH39 4HL ("the property")**

**Case Reference: FTS/HPC/EV/20/0518**

**Scott Masterton and Nicola Furley, 21 St Baldreds Road, North Berwick, East  
Lothian, EH39 4PY ("the Applicants")**

**Kieron Dixon and Megan Denholm, 8D Kirk Ports, North Berwick, East Lothian,  
EH39 4HL ("the Respondents")**

1. By application received on 14 February 2020 the Applicant seeks an order for recovery of possession of the property in terms of Rule 66 of the Rules. The Applicant lodged documents in support of the application including copy short assured tenancy agreement, AT5 Notice, Notice to Quit and Section 33 Notice. The tenancy agreement identifies the Respondents as joint tenants and is signed by both of them. The Applicant seeks an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act").
2. On 28 February the Tribunal issued a letter to the Applicant requesting further information regarding service of the Notice to Quit and Section 33 Notice. In response the Applicant sent an email to the Tribunal stating that "the documents in question were served personally by myself in the presence of

Niki to Megan and she has signed a letter of acceptance”. The email also states that “Megan attended in person at our home address and we served the documents on her here, personally” The Applicant explains that the second Respondent advised him that the first Respondent suffers from mental health problems that that he was asked not to speak to him directly regarding the matter. The Notices were not given to the first Respondent or delivered to tenancy address.

## DECISION

3. The Legal Member 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;*

*(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 and documents lodged in support of same the Legal Member considers 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 LR9. He indicated at page 16 of the judgment; *"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 the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
6. The application lodged with the Tribunal seeks recovery of possession of a short assured tenancy in terms of Section 33 of the 1988 Act. Section 33 states(1) states “ Without prejudice to any right of a 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 ish, (b) that tacit relocation is not operating and (d) 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.”
7. To meet the requirements of Section 33(b) of the 1988 Act, and prevent tacit relocation from operating, the Landlord must terminate the tenancy contract at the ish date of the tenancy by serving a Notice to Quit. Section 112 of the Rent (Scotland) Act 1984 stipulates that, “No notice by a landlord or a tenant to quit any premises let (whether before or after the commencement of this Act) as a dwellinghouse shall be valid unless it is in writing and contains such information as may be prescribed.” The Legal Member notes that a written Notice to Quit, containing the relevant prescribed information was given to one of the Respondents. This was not at the tenancy address, but at the Applicants home address, outwith the presence of the other Respondent, the joint tenant. In

order to terminate the tenancy contract, the Notice to Quit must be issued to all tenants. The Legal Member is satisfied that the Notice to Quit was not issued to the first Respondent and that the Applicant has therefore failed to terminate the tenancy contract. The Applicant has not complied with the requirements of section 33(b) of the 1988 Act

8. The Legal Member proceeded to consider whether the Applicant had complied with the requirements of Section 33(d) of the 1988 Act. This requires the Applicant to give to the tenant notice stating that he requires possession of the house. The Legal member notes that the Section 33(d) Notice was given to the Second Respondent at the same time as the Notice to Quit, at the home of the Applicant and outwith the presence of the other Respondent, the joint tenant. Section 54 of the 1988 Act states, "A notice served under this Part of this Act on a person or notice so given to him may be served or given – (a) by delivering it to him: (b) by leaving it at his last known address; or(c) by sending it by recorded delivery letter to him at that address.". Section 55(3) of the 1988 Act states "Where two or more persons jointly constitute either the landlord or the tenant in relation to a tenancy, then, except where otherwise provided, any reference in this part of this Act to the landlord or to the tenant is a reference to all the persons who jointly constitute the landlord, or the tenant, as the case may require" The Legal Member is satisfied that for a landlord to comply with the requirements of section 33(d) of the 1988 Act, a Notice under this section must be given to both Respondents, as joint tenants. The Notice was handed personally to the Second Respondent, outwith the presence of the First Respondent, and not at the tenancy subjects. The Applicant has therefore failed to comply with the requirements of this section of the 1988 Act.
9. The Applicant has failed to comply with the requirements of section 33(b) and (d) of the 1988 Act. The Legal member therefore concludes that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

### **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 Legal 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 the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

Josephine Bonnar  
Legal Member  
23 April 2020