DECISION AND STATEMENT OF REASONS OF LEGAL MEMBER (under 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")

Chamber Ref: FTS/HPC/EV/19/0579

Re: Property at 87 Minto Crescent, Glenrothes, KY6 1LR **("the Property")**

Parties:

Ewan Bell ("the Applicant")
Michelle Baxter or Sneddon ("the Respondent")

Joel Conn (Legal Member)

BACKGROUND

1. On 21 January 2019 the Applicant submitted an application purportedly under Rule 66 of the Rules, being an "application for order for possession upon termination of a short assured tenancy". The terms of the application stated that the possession/eviction grounds were "Grounds 8 11 12 13" (*sic*). In reference to the required documents, the Applicant stated "Notice to Quit" and "not received any rent money since 31/3/2018".

2. The application was accompanied by:

   a. A Notice to Quit dated 11 April 2018 providing the Respondent with notice to leave the Property by 22 May 2018.

   b. A notice under section 19 of the Housing (Scotland) Act 1988 (an "AT6"). This was also dated 11 April 2018 and provided the Respondent with notice that "proceedings will not be raised before 22 May 2018". At Part 2 of the notice, the Applicant stated that he relied on "Grounds 12 13 14 16" (*sic*). At Part 3, where the Applicant is to state the reasons for relying on those grounds, the Applicant stated:

      > "Some Outstanding rent money. House is not being Kept up to a satisfactory standard. None contact from Tenant" (*sic*).

   c. An envelope bearing to have been sent to the Respondent by Royal Mail Signed For (more commonly referred to as "recorded delivery") on 11 April 2018 but thereafter returned to sender on grounds of being "not called for" by 1 May 2018.

3. Noting the absence of a copy of the lease, an AT5, or a section 33 Notice (all required for an application in terms of Rule 66) the Tribunal wrote to the Applicant on 25 February 2019 seeking those documents as well as confirmation of the postcode for the Property.

4. The Applicant responded by email on 2 March 2019 with a letter providing the postcode and saying: "I dont have a copy of the tenancy agreement but have a copy of Housing benefit Notification which stopped on 21/3/18"; "I dont have a copy of the Short assured Tenancy AT5"; and "I dont have a copy of the Section 33 (1) (d) of the 1988 Act" (all *sic*). Also emailed was a scan of a letter from Fife Council dated 6 April 2018 purporting to show that Housing Benefit payments to the Respondent had stopped from 21 March 2018 until further notice.

5. The matter was passed for consideration by a Legal Member and, on 12 March 2018, on instruction from the Legal Member, the Tribunal wrote requesting further information. Following the Rules, the Applicant was asked for more details of the lease being "when it started and what its terms were eg the amount of the rent and any deposit paid". The Tribunal also asked the Applicant whether, in considering the papers provided, the application was actually to be considered under Rule 65 (an "application for order for possession in relation to assured tenancies").

6. The Applicant responded by email on 13 March 2019 stating:

   "tenancy started May 2014

   "No Deposit was paid

   "Rent was £495 PCM

   "- Yes it was assured tenancy" (*sic*)

7. The application was considered by the current Legal Member under delegated powers in order to carry out the functions detailed in Rules 5 and 8.

DECISION

8. The Legal Member considered that the application in terms of Rules 5 and 8 of the Rules. These Rules provide:

   5.—(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

   (2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement. …

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.

9. Rule 65, governing the application, further provides:

Where a landlord makes an application under section 18(1) (orders for possession) 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;

(iii) the name and address of the tenant; and

(iv) the possession grounds which apply as set out in Schedule 5 of the 1988 Act;

(b) be accompanied by—

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

(ii) a copy of the notice served on the tenant by the landlord of intention to raise proceedings for possession of a house let on an assured tenancy;

(iii) a copy of the notice to quit served by the landlord on the tenant (if applicable); and

(iv) evidence as the applicant has that the possession ground or grounds has been met; …

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

10. Section 18(6) of the 1988 Act (as amended) states:

(6) 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 I of Schedule 5 to this 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.

11. Section 19 of the 1988 Act (as amended) states:

(1) The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—

(a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or

(b) the Tribunal considers it reasonable to dispense with the requirement of such a notice.

(2) The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.

(3) A notice under this section is one in the prescribed form informing the tenant that—

(a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and

(b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.

(4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—

(a) two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and

(b) in any other case, two weeks.

...

(7) A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.

12. After consideration of the application and attachments, 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 Rules.

REASONS FOR THE DECISION

13. Insofar as the Applicant may seek the application to be considered under Rule 66 (which seems doubtful from the terms of the email of 13 March 2018, but has not been conceded), the application would fall to be refused under Rule 8(1)(c) as it is incomplete in terms of Rule 66, is thus not capable of being accepted under Rule 5, and the Tribunal thus has good reason not to accept it under Rule 8(1)(c). The application lacks an AT5 or Section 33 Notice.

14. I have proceeded on the basis that the Applicant means to rely on the AT6 and pursue an application under Rule 65. In those circumstances, the application is frivolous and falls to be refused in terms of Rule 8(1)(a). "Frivolous" in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court, [1997] EWCA Civ 1575*. 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 this definition that I have considered as the test in this application in holding that the application is frivolous in that it has no prospect of success for the reasons following.

15. In consideration of all the papers, the application clearly cannot be granted as the AT6 notice could no longer be relied upon in terms of section 19(7) of the 1988 Act.

16. The terms of section 19(7) of the 1988 Act are quite clear. An AT6 has a 'shelf-life' of six months after the "date on or after which the proceedings for possession to which it relates could have been raised". Leaving aside whether the date in the AT6 was overly cautious, as it appears the Applicant could have selected an earlier date for raising proceedings than 22 May 2018, over six months have certainly expired between 22 May 2018 and the lodging of the application. The AT6 can no longer be relied upon and the whole application is thus frivolous.

17. In any case, the terms of the AT6 did not satisfy the requirements of the 1988 Act in my view. The Chamber President reviews the case law, authorities and guidance on completion of AT6s in her decision in application by *V & E*

Properties (Dumfries) Limited v Ian West (reference EV/17/0454) of 22 December 2017. In that decision, she notes that for an AT6 to satisfy the requirements of section 19(3) of the 1988 Act, there requires to be both the required information in Part 2 and Part 3, and that information in Part 3 must be adequate so that, in regard to grounds relating to rent arrears, "the amount of the arrears should be stated or the notice should contain sufficient information to enable the tenant to calculate the amount that is due". I adopt her reasoning. Clearly this AT6 notice contains no information on the arrears that the tenant is expected to pay so as to avoid the risk of repossession under Ground 12. It provides no details as to the specific issues of neglect to the Property relied upon in regard to Ground 14 and the neglect to the furniture relied upon for Ground 16. Though we may assume that the reliance on Ground 13 is in regard to failure to maintain the Property, we have no details as to the specific term of the lease relied upon. The notice is entirely insufficient in regard to each of the ground relied upon. In conclusion, this application lacks any valid AT6.

18. Further, the application seeks eviction relying on "Grounds 8 11 12 13". There is no AT6 supporting Ground 8 and 11.

19. Finally, in absence of further details of the terms of the lease, we cannot consider either whether the lease complied with section 18(6) of the 1988 Act or whether the Notice to Quit is valid. In terms of section 18(6) of the 1988 Act, in order to seek possession under any of the grounds that the Applicant has mentioned in the AT6 or application, either the Tenancy requires to be a "a statutory assured tenancy" (that is, the ish having expired and no tacit relocation operating, all under section 16 of the 1988 Act) or the lease requires to state in detail at least the grounds relied upon in the AT6. We cannot judge the terms of the lease, as almost no information has been provided by the Applicant. We cannot assess whether the tenancy is now "a statutory assured tenancy" as we do not know the ish date of the lease and cannot judge whether the Notice to Quit has validly terminated at an ish. This is all in the context that the application papers suggest the Notice to Quit and AT6 never reached the Respondent (as they appear to have been returned "not called for"). Had I been otherwise satisfied that the AT6 was in an acceptable form and in time, I would have regarded the Tribunal as unable to make an order for possession in terms of section 18(6) of the 1988 Act on the basis of the application and further submission received.

20. In all the circumstances, I do not consider there to be any prospect of success of this application and an application based on the documentation provided is rejected on the basis that the application is frivolous.

21. As a final point, I note that the Applicant's notice to the Local Authority under section 11 of the Homelessness etc (Scotland) Act 2003 referred to the application being in regard to a Scottish secure tenancy. There is an additional

question as to whether there was a valid Section 11 Notice or whether the application was further incomplete due to this. Given the multitude of other issues with the application, I do not consider this point in more detail.

RIGHT OF APPEAL

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:-

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.

J. Conn

Legal Member/Chair	20 March 2019 **Date**