

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALISON KELLY, 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

9E Lawton terrace, Dundee, DD3 6ES

Case Reference: FTS/HPC/EV/19/0749

Mr Sara Janine Matthew ("the Applicant")

Mrs Ian Marsh ("the Respondent")

The Application was lodged on 7th March 2019 under Rule 66 of the Chamber Procedural Rules, being an application by a private landlord for possession on termination of an Assured Tenancy.

The following documents were enclosed with the Application:

- (i) Copy Tenancy Agreement
- (ii) Copy AT6 dated 30th January 2019
- (iii) Copy Proof of delivery dated 1st February 2019
- (iv) Copy AT6 dated 8th February 2019
- (v) Copy Proof of Delivery dated 8th February 2019
- (vi) Copy Notice to Quit dated 30th January 2019 with possession date of 3rd March 2019
- (vii) Copy Rent Statement
- (viii) Copy Notice to Quit dated 6th February 2019 with possession date of 3rd March 2019
- (ix) Copy section 11 Notice

(x) Copy letter from Applicant's solicitor to Respondent's solicitor dated 7th February 2019

The Tribunal sent a letter to the Applicant dated 19th March 2019 asking which of the two Notices to Quit she wished to rely on, and proof of service of the second notice if that was the one she chose. The letter also stated that it appeared that neither of the Notices To Quit stipulated a date upon which the Respondent was to vacate which coincided with an ish date. The tribunal requested written representations stating the basis upon which the tribunal could proceed to consider the application in the circumstances.

The Applicant replied by letter on 27th March 2019. She stated that the Notices were served by recorded Delivery post, and that Proof of Delivery had already been produced. She also asked that only the AT6 be relied on.

The Tribunal sent an email to the Applicant on 11th April 2019 after a legal member had considered the Applicant's response. Said letter noted that as neither Notice To Quit specified a termination date that coincided with an ish, they were prima facie invalid. The email also stated that the Tenancy Agreement does not set out in full the grounds for recovery of possession set out in Schedule 5 to the Housing (Scotland) Act 1988, and seeks to incorporate them by reference at paragraph 17 of the schedule annexed to the tenancy Agreement. The email made reference to the cases of Royal Bank of Scotland v Boyle 199 House LR 63 and Eastmoor LLP v Bulman 2014 GWD 26-529, which both held that incorporation of the Schedule 5 grounds by reference is not appropriate, and in both cases the actions were dismissed. The Applicant was asked to provide written representations stating the basis on which the Tribunal could proceed to consider the application.

The Applicant replied by email dated 25th April 2019. She did not address the point which had been raised regarding the AT6.

I 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."

After consideration of the application and supporting documentation I consider that the application should be rejected on the basis that it is frivolous or vexatious in terms of Rule 8(1) (a) of the Procedural Rules.

REASONS FOR DECISION

'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". It is that definition which I have to consider in this application in order to determine whether or not this application is frivolous, misconceived, and has no prospect of success.

The Notices to Quit are both invalid because they do not seek to terminate the tenancy at an ish date. It is not competent in this case to proceed without a Notice To Quit as does not the Tenancy Agreement does not set out in full the grounds for recovery of possession set out in Schedule 5 to the Housing (Scotland) Act 1988, and seeks to incorporate them by reference at paragraph 17 of the schedule annexed to the Tenancy Agreement. In terms of cases of *Royal Bank of Scotland v Boyle* 199 House LR 63 and *Eastmoor LLP v Bulman* 2014 GWD 26-529, incorporation of the Schedule 5 grounds by reference is not appropriate. The current application therefor has to be rejected.

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.

Miss Alison Kelly
Legal Member

13th May 2019

