

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ANNE MATHIE, 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 Procedural Rules")

in connection with

8 Faskine Avenue, Cairnhill, Airdrie, ML6 9DX

Case Reference: FTS/HPC/EV/19/1477

**Mr James Dolan c/o Morison and Smith Solicitors, 39 High Street, Carluke, ML8 4AL ("the
applicant")**

**Mr Peter Mark Timoney, Mrs Laura Timoney, 8 Faskine Avenue, Cairnhill, Airdrie, ML6 9DX
("the respondents")**

1. BACKGROUND

On 15 May 2019, an application was received from the applicant's representative. The application was made under Rule 66 of the Procedural Rules being an application for possession on termination of a Short Assured Tenancy. The following documents were enclosed with the application:-

- A copy of the tenancy agreement dated 20 October 2017
- 2 x AT5 dated 20 October 2017

- A Notice to Quit from Landlord's letting agents to tenant dated 17 December 2018 asking tenant to remove by 20 February 2019.
- A Section 33 Notice dated 17 December asking the tenants to remove by 20 February 2019.
- A Certificate of posting dated 17 December 2018.
- A section 11 Notice to North Lanarkshire Council.

By letter dated 28 May 2019, the Tribunal requested further information from the applicant's representative. This letter advised:

"Before a decision can be made, we need you to provide us with the following:

- *The ish of the tenancy is 19th of the month. The Notice to Quit and Section 33 Notice purport to end the tenancy on 20 February 2019 which does not tie in with the ish. Please provide your submission as to whether or not you consider the tenancy to have been validly terminated."*

The Tribunal asked for a response by 11 June 2019. On 26 June 2019 the Tribunal wrote again repeating the request for further information. They requested this by 10 July 2019. The applicant's solicitors emailed the Tribunal on 8 July 2019 advising that the letter of 28 May 2019 did not appear to have reached the solicitor dealing with the matter who was now out of the office until 16th July 2019. They advised that they were taking their client's instructions and requested an extension of 2 weeks to allow them to confirm the position to the Tribunal and/or seek leave to amend the application which has been presented. The Tribunal wrote again in response to this request for an extension on 30 July 2019 asking for a response to be received by 13 August 2019. On 15 August 2019 the applicant's solicitors emailed the Tribunal in the following terms:

'We require to concede that the notices served by the letting agent did not terminate the tenancy at its ish. We are accordingly instructed to serve fresh notices which will terminate the tenancy as at 19 October 2019. We would request that consideration of the application is continued to 31 October 2019 to allow amendment of the application

in due course. This would be preferable to the application being rejected and a fresh application being required."

2. DECISION

I considered the application in terms of Rule 8 of the 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, the attachments and correspondence from the applicant's representative, I consider that the application should be rejected on the basis that

I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

3. REASONS FOR DECISION

The application has been made in terms of Rule 66 which only applies to repossession on the termination of a Short Assured Tenancy.

It is a requirement that the date to vacate property stated on the Notice to Quit corresponds to the ish date of the tenancy. In the present case the tenancy was stated to come to an end on 19th April 2018 and if not terminated on that date would continue 'thereafter on a month to month basis'. The ish date in this case therefore is the 19th day of the month. The Notice to Quit and Section 33 Notice however state a removal date of 20th February 2019 which does not correspond with the ish date.

I have considered the further information from the applicant/applicant's representative in order to consider whether or not the application must be rejected as frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules. '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.

For the reasons stated above, this application in terms of Rule 66 must be rejected upon the basis that I have good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the Procedural Rules.

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.

Anne Mathie

Anne Mathie
Legal Member
23 August 2019
