

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

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**DECISION AND STATEMENT OF REASONS OF ANDREW UPTON, 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

2A Chapelcross Avenue, Airdrie, ML6 6PT

**Case Reference: FTS/HPC/EV/19/1841**

**Northwood (Glasgow) Ltd ("the applicant")**

**Ms Lindsey Ramsey ("the respondent")**

1. On 14 June 2019, an application was received from the applicant. The application was made under Rule 65 of the Procedural Rules being an application for recovery of possession of a property let on an Assured Tenancy. The following documents were enclosed with the application:-

- Copy Short Assured Tenancy Agreement dated 2 March 2016;
- Copy form AT5 dated 2 March 2016;
- Copy Rent Statement;
- Copy Notice to Quit dated 28 February 2018; and
- Copy Form AT6 dated 3 March 2019.

**DECISION**

2. 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."*

3. After consideration of the application, the attachments and correspondence from the applicant, I consider that the application should be rejected on the basis that it appears to be frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules, and 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.

## REASONS FOR 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*". 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.
5. This application proceeds under section 18 of the Housing (Scotland) Act 1988. In terms thereof:-

### ***"18 Orders for possession.***

- (1) *The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.*
- (2) *The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.*
- ... (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."*

6. In terms of section 18(6) of the Housing (Scotland) Act 1988, the 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 the

conditions of subsection (6) are met, which they are not in this case. It follows that, to be entitled to recovery of possession of a property let on an assured tenancy, the applicant would have had to have first terminated the contractual tenancy. One method of doing so would be by bringing the contract to an end at its natural expiry by service of a notice to quit. In this case, that appears to be what the applicant has attempted to do.

7. The tenancy agreement commenced on 2 March 2016. The first period of let ended on 2 September 2016, and continued on a two monthly basis thereafter.
8. The purpose of a notice to quit is to stop tacit relocation from operating. It cannot bring a tenancy to an end at a date arbitrarily selected. To be effective, the end date specified in a notice to quit must coincide with the ish date. In this case, the notice to quit ought to have specified that the tenancy would end on the first available ish date after the expiry of the two months' notice period required by the tenancy agreement. The available ish dates in any given year for this agreement are 2 January, 2 March, 2 May, 2 July, 2 September and 2 November.
9. The Notice to Quit in this case specified that the tenancy would come to an end on 1 May 2018. That was not an ish date. As such, the contractual tenancy is continuing by tacit relocation.
10. Accordingly, for the application to proceed, the applicant would need to rely on the factors of s.18(6) being satisfied. Whilst I am satisfied that the first of those (that the grounds for possession are among those listed at s.18(6)(a)), the tenancy agreement does not provide for the tenancy to be brought to an immediate end on the basis of those grounds. Rather, it simply provides that the landlord may seek to recover possession based on those grounds. That is insufficient, in my view, to satisfy the requirements of s.18(6)(b). Accordingly, the Tribunal cannot grant an order for possession in these circumstances.
11. For those reasons, it is my view that the application is frivolous within the

meaning of Rule 8(a). Further, it is my view that it would be inappropriate in these circumstances to accept this application in terms of Rule 8(c). I reject the application.

### **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.

Andrew Upton  
Legal Member  
28 June 2019