

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

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**DECISION AND STATEMENT OF REASONS OF SUSANNE L. M. TANNER Q.C.,  
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 (Procedure) Regulations 2017, as amended, Schedule 1 ("the 2017  
Rules")**

**in connection with**

**6A Irvine Road, Crosshouse, Kilmarnock, KA2 0HQ ("the Property")**

**Case Reference: EV/19/1994**

**Dr Marshall Illingworth, c/o Lyn-Mar, 20 West George Street, Kilmarnock, KA1 1DG  
("the Applicant")**

**Lyn-Mar, 20 West George Street, Kilmarnock, KA1 1DG  
("the Applicant's Representative")**

**Mr Scott Kennedy, 6A Irvine Road, Crosshouse, KA2 0HQ  
("the Respondent")**

**DECISION**

The Application dated 27 June 2019 is rejected on the basis that there is good reason to believe that it would not be appropriate to accept the application within the meaning of Rule 8(1)(c) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Rules").

## REASONS

1. On 27 June 2019, an application was received from Lyn-Mar, naming itself as the Applicant's Representative, purportedly acting on behalf of the Applicant ("the Application"). The Application was made under Rule 66 of the 2017 Rules, being an application for possession on termination of a Short Assured Tenancy. The following documents were enclosed with the Application:-
  - a. "Lease Agreement" between M Illingworth c/o Lyn-Mar First For Mortgages (Landlord) and Scott Kennedy (tenant) dated 18 July 2017;
  - b. AT5 dated 17 July 2017
  - c. Notice to Quit (unsigned) dated 27 March 2019;
  - d. AT6 Form dated 27 March 2019;
  - e. Letter of authority from D Marshall Illingworth authorising Lyn-NMar to act on his behalf at the tribunal in relation to the Property; and
  - f. Section 11 Notice.
2. On 1 July 2019, the Application was considered by a legal member of the tribunal acting under the delegated powers of the Chamber president considered the Application and associated paperwork. On 1 July 2019, the tribunal sent an email to the Applicant's Representative to acknowledge receipt of the Application and associated paperwork requested further information, namely the notice given to the tenant under Section 33 of the 1988 Act stating that it should be provided by 8 July 2019, otherwise the Application may be rejected.
3. On 5 July 2019, the Applicant's Representative responded stating that *"It is our understanding that we did not need to give a Section 33 as we were 1. not terminating at the end of the lease date and 2- our notice to quit also held the relevant information."* The Applicant's Representative attached a document headed "Renting Scotland: Notice and Eviction Documents". No Section 33 notice was produced by the Applicant's Representative.
4. On 10 July 2019 the tribunal obtained the Title Sheet for the Property which shows the registered proprietor since 4 March 2009 as Newfield (Dundonald) Limited, incorporated under the Companies Acts and having their registered office at McLellan & Harris, Chartered Accountants, 19 Waterloo Street, Glasgow.

5. On 19 July 2019, the Application paperwork and additional information was considered by a legal member of the tribunal acting under the delegated powers of the Chamber President.
  
6. On 22 July 2019, the tribunal sent a request for further information to the Applicant's Representative, stating the following:
  - a. *"The Application has been lodged in the name of Dr Marshall Illingworth, care of Lyn Mar. The title to the Property is held in the name of a company called Newfield Dundonald Limited. Can you please explain why the tenancy was granted naming Dr Illingworth as landlord and whether he has authority to grant a tenancy over the Property from the registered owner. If so, please provide that authority.*
  
  - b. *The notice to quit which has been served indicated that the tenancy will be terminated from and after 4 June 2019. The tenancy agreement which has been submitted bears to be a short assured tenancy which initially ran from 18 July 2017 to 18 January 2018. The date in the notice to quit does not seem to coincide with an ish date of the tenancy. Please explain why you believe the Notice to Quit is valid and effective.*
  
  - c. *The form AT6 which has been submitted does not seem to be in the current prescribed form as set out in The Rent Regulation and Assured Tenancies (Forms)(Scotland) Regulations 2017. These Regulations have been in force since 1 December 2017 and reflect the transfer of jurisdiction form the sheriff court to the tribunal. Please explain why you think that form AT6 that has been served is valid, taking into account the relevant Regulations and also the provisions relating to the required content of the said Form AT6 as set out in section 19 of the Housing (Scotland) Act 1988.*
  
  - d. *Please provide confirmation and evidence of the method of service of the notice to quit and Section 33 notice.*

*Upon receipt of the above information, a final decision can then be taken on whether your eviction application is valid and whether it should be accepted and referred to the tribunal for full determination. You may wish to consider obtaining*

*independent legal advice on the matters raised in this request. You should be aware that the Tribunal has power to reject applications on grounds set out in rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.*

*Please reply to this office with the necessary information by 5 August 2019. If we do not hear from you within this time, the President may decide to reject the Application. ...”*

7. No correspondence or further information was received from the Applicant's Representative by 5 August 2019.
8. On 16 August 2019, the tribunal sent a further letter to the Applicant's Representative, referring to its letter of 22 July and again requesting the further information, giving a new deadline of 30 August 2019 and stating that if the information is not provided, the President may decide to reject the Application.
9. No correspondence or further information was received from the Applicant's Representative up to and including 17 September 2019.
10. On 17 September 2019, the Application paperwork was considered by a legal member of the tribunal with delegated powers of the Chamber President. As at that date no information had been received from the Applicant's Representative to the tribunal's requests to provide information dated 22 July and 16 August 2019.
11. The Application was considered in terms of Rule 8 of the 2017 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."*

12. The Applicant's Representative has had ample opportunity to obtain whatever advice it required and provide the required information in response to the tribunal's requests of 22 July and 16 August 2019 and has not done so by 30 August 2019 (or indeed by 17 September 2019 when the matter was re-considered by the legal member acting under the delegated powers of the Chamber Preseident). The title of the Applicant is in issue as is the Applicant's Representative's authority to act for the registered proprietor. No explanation or remedy has been provided by or on behalf of the Applicant within the required timescale. In addition to there are a number of apparent fundamental deficiencies with the paperwork lodged with the Application which the Applicant's Representative has failed to remedy or explain within the required timescale.

13. After consideration of the Application, and the said failures of the representative naming itself on the Application as Applicant's Representative, I considered 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.

### **What you should do now**

14. If you accept the Legal Member's decision, there is no need to reply.

**15. 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.

Susanne Tanner

Susanne L M Tanner Q.C.

Legal Member

17 September 2019