



**Decision 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/19/2497**

**Re: Property at 15 Muirfield Road, Falkirk, FK5 3BS (“the Property”)**

**Parties:**

**Mr John Gillies, c/o 584 Cathcart Road, Glasgow, G42 8AB (“the Applicant”)**

**Ms Stephanie Muirhead, 15 Muirfield Road, Falkirk, FK5 3BS (“the Respondent”)**

1. On 9 August 2019, an application was received on behalf of the Applicant. The application was made under Rule 66 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under a Short Assured Tenancy on termination of the tenancy in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The following documents were enclosed with the application or submitted subsequently in support of the application in response to further information requests by the Tribunal:-
  - (i) Tenancy Agreement dated 27 February 2017;
  - (ii) Form AT5 ;
  - (iii) Notice to Quit;
  - (iv) Section 33 Notice;
  - (v) Notice to Local Authority section 11 Notice;
  - (vi) Form AT6 ;
  - (vii) Certificate of Posting postal receipt in respect of service of notices.
  
2. The Tenancy Agreement between the parties stated that the initial term of the tenancy was from 4 March 2015 until 5 September 2015, and thereafter continuing on a month to month basis.

3. The Notice to Quit, Section 33(1)(d) Notice and Form AT6 addressed to the Respondent were all dated 3 June 2019 and stated that the tenancy would terminate/ that the landlord required possession of the Property on 18 June 2019. The Certificate of Posting submitted by the Applicant confirmed that documents were posted to the Property address using the Recorded Delivery/"Signed For" service on 4 June 2019.

## DECISION

4. I have considered the application 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."*

5. After consideration of the application, I consider that the application should be rejected on the basis that it has no prospect of success and is accordingly frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.

## REASONS FOR DECISION

6. "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. 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 applied as the test in this application and, on consideration of this test, I have determined that this application is frivolous, misconceived and has no prospect of success.

7. Section 33 of the 1988 Act provides as follows:-

**33 - Recovery of possession on termination of a short assured tenancy.**

*(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First –Tier Tribunal shall make an order for possession of the house if satisfied that—*

*(a) that the short assured tenancy has reached its ish;*

*(b) that tacit relocation is not operating;*

*(c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and*

*(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.*

*(2) The period of notice to be given under subsection (1)(d) above shall be—*

*(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;*

*(ii) in any other case, two months.*

8. The issue before me is whether recovery of possession of the property under Section 33 of the 1988 Act is competent. To recover possession of a short assured tenancy under Section 33 of the 1988 Act, the Tribunal must be satisfied that the requirements of this section are met. The tenancy was for a period of 6 months and could be extended on a monthly basis thereafter. The "ish date" in this case therefore falls on the 5<sup>th</sup> day of every month. The Notice to Quit served in this case was dated 3 June 2019, posted on 4 June 2019 and stated that the Tenancy Agreement would terminate on 18 June 2019. 18 June 2019 is not an ish date and accordingly the terms of Section 33(1)(a) above is not met as the tenancy has not reached its ish. The Section 33 (1)(d) Notice was dated 3 June 2018, posted 4 June 2019 and sought vacant possession as at 18 June 2019. This

only provided at best 13 days' clear notice. As at least 2 months' notice is required in terms of Section 33(2) above is not met. An order for recovery of possession could not therefore be competently made by the First-Tier Tribunal in this application under Rule 66.

9. I also considered whether it would be possible for this application to be amended by the Applicant to an application under Rule 65 (possession on mandatory or discretionary grounds in terms of Section 18 of the Housing (Scotland) Act 1988, given that a Form AT6 had been submitted with the application, specifying Ground 8 (3 months' rent arrears). However, in terms of Section 19(4)(b) a minimum of two weeks' notice is required. The Form AT6 dated 3 June 2019, if also posted on 4 June 2019 (and could also be shown to have been delivered on 5 June 2019) only gives at best 13 days' notice and this is not even 13 days' clear notice.
10. For the reasons set out above, it seems to me that the application is frivolous as the ~~statutory requirements are not met and there are no prospects of success.~~

### **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 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 of the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

Nicola Weir  
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**Legal Member/Chair**

21/10/2019  
\_\_\_\_\_  
**Date**