



**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

12 Stonelaw Towers, Burnside, Glasgow, G73 3RL ("the Property")

Case Reference: FTS/HPC/EV/19/2560

Ms Jacquie Sawkins ("the applicant")

Miss Dionne Thomson ("the respondent")

1. On 15 August 2019, two applications were received from the applicant. A further application was received from the applicant on 27 August 2019. Two of those applications (CV/19/2661 and EV/19/2561) have been accepted by the Tribunal and put out for a Case Management Discussion. This decision relates only to the remaining application (EV/19/2560).
2. The application was made under Rule 65 of the Procedural Rules being an application for recovery of possession under section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act). The following documents were enclosed with the application:-

- Copy Tenancy Agreement;
- Copy Notice to Quit dated 26 February 2018; and
- Copy Form AT6 dated 26 February 2018.

DECISION

3. 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."

4. 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

5. '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.
6. This application proceeds under sections 18 and 19 of the 1988 Act. In terms of the 1988 Act:-

"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.*

19 Notice of proceedings for possession.

- (1) The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—*
 - (a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or*
 - (b) the Tribunal considers it reasonable to dispense with the requirement of such a notice.*
- (2) The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.*
- (3) A notice under this section is one in the prescribed form informing the tenant that—*
 - (a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and*
 - (b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.*
- (4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—*
 - (a) two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and*
 - (b) in any other case, two weeks.*
- (5) The First-tier Tribunal may not exercise the power conferred by subsection (1)(b) above if the landlord seeks to recover possession on Ground 8 in Schedule 5 to this Act.”*

- 7. In terms of section 18(2) of the 1988 Act, the provisions relating to orders of possession are subject to section 19 of the 1988 Act. It is here that the

applicant fails. In terms of section 19(1), the Tribunal cannot entertain an application for possession under section 18 unless either the landlord has served appropriate notice on the tenant in Form AT6 or the Tribunal considers it reasonable to dispense with the notice.

8. The problem that the applicant has is that the Form AT6 is both incorrectly completed and, in any event, does not specify a Ground for eviction that appears in Schedule 5 to the 1988 Act. The Form AT6 is split into four sections. Part 1 instructs the landlord to complete the name of the tenant and the address of the tenanted property. Part 2 instructs the landlords to complete their own name and address, and thereafter to specify the ground for possession. Part 3 instructs the landlords to specify in detail the reasons why they consider that the relevant ground or grounds are satisfied. Part 4 instructs the landlord to specify the earliest date upon which an action to the Tribunal may be raised. In order to comply with section 19(3), the landlord must obey those instructions stated in the prescribed Form AT6.
9. In this case, the applicant has wrongly completed Part 2. The requirement in Part 2, in relation to stating which ground applies, is expressed by the Scottish Ministers as follows:-

*“Give the ground number(s) and **fully state ground(s) as set out in schedule 5 of the Housing (Scotland) Act 1988**: continue on additional sheets of paper if required)”*

What the applicant has done is state the tenancy address. No reference is made to any Ground found in Schedule 5.

10. Separately, the requirement at Part 3 is expressed by the Scottish Ministers as follows:-

“State particulars of how you believe the ground(s) have arisen: continue on

additional sheets of paper if required

What is required by Part 3 is that the landlord gives detail of why the ground or grounds specified in Part 2 applies. Thus, for Ground 8, one might expect to see specification as to the dates when rent fell due but was not paid, the total value of arrears and how many months' rent that equates to. However, what the applicant has done is state the following:-

“Non renewal of tenancy. Termination of short assured tenancy. At end of original term from 1/11/17 to 30/4/18.”

None of those statements supports an action to terminate this tenancy under section 18.

11. Accordingly, on the basis that the Form AT6 has been improperly completed, it is my view that the Form AT6 is invalid. As such, the requirements of section 19 of the 1988 Act have not been met.

12. For those reasons, it is my view that the application cannot succeed under section 18. It 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
9 September 2019

