

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF NEIL KINNEAR, 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 Rules")

in connection with

78 Seagrove Street, Glasgow G32 6EL

Case Reference: FTS/HPC/EV/19/3509

MR RODERICK MUIR ("the Applicant")

MISS CHRISTINA SCOTT ("the Respondent")

1. On 31st October 2019, an application was received from the Applicant. The application was made under Rule 65 of the Rules being an application for order for possession in relation to assured tenancies. The following documents were enclosed with the application:-
 - (a) Copy Short Assured Tenancy Agreement;
 - (b) Copy Form AT6
 - (c) Copy Notice to Quit;
 - (d) Copy Rent Arrears Statement;
 - (e) Copy Section 11 notice.

(f) Copy relevant executions of service.

The form AT6 intimated to the Respondent that the Applicant intended to raise proceedings for possession of the house on ground 8 of Schedule 5 to the *Housing (Scotland) Act 1988*.

DECISION

2. I considered the application in 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."

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 is frivolous within the meaning of Rule 8(1)(a) of the 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 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.
5. The notice to quit, which is dated 11th October 2019, is invalid in respect that it specifies a date to leave the premises of 28th October 2019. That termination date is not an *ish* of the tenancy agreement, as that date is required to be in order to constitute an effective notice. The Short Assured Tenancy Agreement states at paragraph 2 that "The tenancy will commence on 18/08/14, THE EIGHTEENTH OF AUGUST TWO THOUSAND AND FOURTEEN and will terminate on 01/03/2015, THE FIRST OF MARCH TWO THOUSAND AND FIFTEEN when you are required to remove from the premises.". There is no express provision regarding continuation of the agreement after the *ish*. Accordingly, as the agreement was not brought to an end on the 1st March 2015, the agreement continued upon the legal presumption of *tacit relocation* for further periods of the same duration as the original lease agreement provided. That period is 196 days. That being so, the *ish* dates in 2019 would appear to fall on 11th June 2019 and 24th December 2019, and not the date given in the notice to quit of 28th October 2019.
6. The notice to quit required to end the lease on a date which is an *ish* of the lease, but the date specified of 28th October 2019 was not an *ish* of the lease (see *Rennie &*

Ors. – Leases S.U.L.I. (1st Ed.) paragraphs 22-46 to 22-49, *Gloag & Henderson – The Law of Scotland (14th Ed.)* paragraph 35-25 and 35-26, and section 38 of the *Sheriff Courts (Scotland) Act 1907*). Upon that basis, the notice to quit is invalid. Further, the notice to quit is dated 11th October 2019, but was sent by recorded delivery post and signed for on 15th October 2019. In order to be valid, a notice to quit for any premises let as a dwelling-house must be given not less than four weeks before the date on which it is to take effect (see s.112 of the *Rent (Scotland) Act 1984* and *Rennie & Ors. – Leases S.U.L.I. (1st Ed.)* paragraphs 22-48). As the notice period given in the notice to quit is less than four weeks, the notice to quit is invalid on this basis also.

7. A further defect in the notice to quit which renders it invalid, is that it fails to include the prescribed information set out in paragraph 2 of Schedule 1 to the *Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988* as amended, as the information set out in paragraph 1 which is included is a version of that information contained in a prior version of the legislation. The notice to quit is invalid on that basis also (see *Rennie & Ors. – Leases S.U.L.I. (1st Ed.)* paragraphs 22-47).

8. For all these reasons, the lease has not been terminated by a valid notice to quit, remains in force, and a statutory assured tenancy has not arisen. The remaining question is whether the Tribunal would be entitled to make an order for possession in this application, upon the basis that the terms of the lease agreement are deemed by the Tribunal in relation to ground 8 of Schedule 5 of the *Housing (Scotland) Act 1988* to “make provision for it to be brought to an end on the ground in question” in terms of section 18(6)(b) of the Act. That question was considered previously in the Sheriff Court in the cases of *Royal Bank of Scotland v Boyle* 1999 Hous LR 63 and *Eastmoor LLP v Bulman* [2014] 6 WLUK 135, which held that a lease may only be brought to an end prior to its *ish* if there is a statutory or conventional irritancy, and that section 18(6) of the *Housing (Scotland) Act 1988* is in effect a provision *anent* conventional irritancies the purpose of which is to restrict the conventional

irritancies to the grounds set out in section 18(6)(a). For that reason, the tenancy agreement must provide for it to be brought to an end on the ground in question, being a ground in schedule 5 to the 1988 Act specified in section 18(6)(a).

9. The lease agreement does not contain any terms referring to, let alone making provision for it to be brought to an end on, ground 8 of Schedule 5 of the *Housing (Scotland) Act 1988*. I would note that the Tribunal does have the power to dispense with the need for the notice of proceedings for possession (form AT6) if it considers it reasonable to do so. However, given the purposes of the notice of proceedings, the requirement to serve one ought not to be dispensed with lightly (see *Rennie & Ors – Leases (1st Ed.)* at para 22-53). Standing the importance of the notice of proceedings in giving notice to the tenant, the Tribunal would not have considered in these circumstances that it is reasonable to dispense with the need for the notice, in the absence of the many other invalidities earlier discussed, if it was asked to do so. In those circumstances, the Tribunal would not be entitled to make an order for possession.

10. I have a number of further observations. Part 2 of the form AT6 narrates ground 8 of Schedule 5 to the *Housing (Scotland) Act 1988* and indicates that this is the ground upon which the Applicant relies. However, Part 3 of the form AT6, which should specify the reasons for seeking possession on the grounds set out in Part 2, is left blank. It fails to state the circumstances that the Applicant relies on as establishing the grounds for seeking possession which are set out in Part 2, and in particular, fails to set out the monetary figure of rent arrears due as at the date of the notice, and the periods of time to which this figure relates. In *Rennie & Ors – Leases (1st Ed.)* at para 22-52, the authors state in relation to the content of a form AT6 “It is not sufficient merely to refer to the Ground in question, or to incorporate the text of the Ground in the notice. The landlord must also specify “particulars” of the Ground(s) stated in the notice. In other words the landlord should state the circumstances that the landlord relies on as establishing the Ground, e.g. if possession were sought on Ground 13, the notice should specify which obligation of the tenancy has been

breached and by what action/inaction of the tenant.”. In *Stalker – Evictions in Scotland* at pages 78 to 79, the learned author states “...the notice must give the tenant sufficient details of the circumstances that the landlord relies upon in asserting that a ground is made out; the purpose of the notice is to tell the tenant what complaint is made against him such that the tenant knows what he has to do in order to put matters right. The landlord should state in summary form the facts which he intends to prove in support of the stated ground. For example, if the ground for eviction is one of the rent arrears grounds under schedule 5 to the Act, the amount of the arrears should be stated or the notice must contain sufficient information so as to enable the tenant to calculate the amount that is due... If insufficient particulars are given, the court cannot entertain the proceedings, unless the sheriff is persuaded to dispense with the notice, or to allow it to be altered or amended in terms of section 19(2).”. Similarly, in the previous edition of *Robson – Residential Tenancies (3rd Edition)*, which comments in more detail upon this issue than the current edition, the author states at paragraph A10-06 with regard to Part 3 of the form AT6 that “It should be made clear to the tenant what actions need to be done to put matters right.”.

11. I consider that the form AT6 is invalid, upon the basis that it fails in Part 3 to state the circumstances that the Applicant relies on as establishing the grounds for seeking possession which are set out in Part 2. In particular, it fails to give any information regarding the amount of arrears which the tenant requires to pay, nor any details of how or when those were accumulated.
12. I also observe that the section 11 notice is defective, in respect that it fails to specify the legislation in terms of which an order is sought from the Tribunal, and is not in the prescribed form.
13. Finally, I note that the Respondent is a joint tenant with another person in terms of the lease agreement. That other person is not named as a Respondent in this application, despite apparently bearing joint liability for payment of the rent. I also

note that the Applicant, according to the paperwork provided, is deceased. His executor, named in the paperwork, would appear to be the appropriate Applicant in this matter.

14. For all these reasons, this application has no prospect of success and must be rejected upon the basis that it is frivolous.

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.

Neil Kinnear
Legal Member
28th November 2019