

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF ALISON KELLY, 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

1 Inveravon Cottage, Polmont, FK2 0YE

Case Reference: FTS/HPC/EV/19/3800

Mr Ross Wilkie & Mrs Nicola Wilkie ("the Applicant")

Miss Elizabeth Christie ("the Respondent")

On 27th November 2019 the Applicants lodged an Application under Rule 65 of the Chamber Procedural Rules, being an application by a private landlord for possession on termination of an Assured Tenancy. The following documents were enclosed with the Application:

- (i) Copy Tenancy Agreement
- (ii) Copy Notice To Quit
- (iii) Copy AT6
- (iv) Statement of Arrears
- (v) Sheriff Officer Execution of Service
- (vi) Section 11 Notice

(vii) Copy AT5

The Tenancy Agreement states that *“The lease, which has a minimum term of six months, shall endure from 12th August 2005 (“the Date of Entry”) to 11th February 2006 notwithstanding the dates of this letter.”*

Both the AT6 and Notice To Quit seek to bring the tenancy to an end at 13th November 2019.

On 11th December 2019 the Tribunal wrote to the applicants stating that the Notice To Quit did not appear to be valid as it called upon the Respondent to vacate the property on a date which did not coincide with an ish or end date of the tenancy. The Applicants were asked to confirm the basis on which the Tribunal could proceed to consider the application.

The Applicants replied by email on the same day. They answered: *“The tenant was given notice to quit on the basis of non payment of rent, for a period of more than 3 months, therefore the date to vacate does not have to coincide with an ish or end date it merely has to be a minimum of 2 weeks notice.*

I gave the tenant 1 calendar month from the date of service as the tenant was now in a month to month rent following the initial 6 month short assured tenancy.”

The Tribunal wrote to the Applicants again on 18th December 2019. The letter stated that before a decision could be made the Applicants would need to provide their authority for their assertion that the Notice To Quit end date did not require to coincide with an ish, and also provide the basis upon which they stated that following expiry of the initial 6 month period of the lease it continued on a monthly basis thereafter, since tacit relocation would normally operate for it to continue on a 6 monthly basis in the absence of the lease itself providing otherwise, which appeared to be the case.

The Applicants responded on 14th January 2020. They stated:

“The Notice to quit end date does not require to coincide with the ish as the tenancy has been brought to an end on the grounds of rent arrears under ground 8 of Schedule 5 of the Housing (Scotland) Act 1988. These grounds are clearly stated on the AT6.

Paragraph 7 of the lease states that “At the expiry or earlier termination of the lease (one

calendar month required by either party)”

From this sentence it is my understanding that the lease continued on a monthly basis. This was agreed by the tenant on the basis that the tenant wanted to rent the property for several years.”

DECISION

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. "

After consideration of the application and supporting documentation I consider that the application should be rejected on the basis that it is frivolous or vexatious in terms of Rule 8(1) (a) of the Procedural Rules.

REASONS FOR DECISION

'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.

I will deal with the point regarding the ish date first. I do not agree with the Applicants' interpretation of the terms of the lease. The lease states it is for a minimum term of 6 months and shall endure from 12th August 29005 to 11th February 2006. Whether the dates specified actually provide a full term of 6 months is debateable, but as this is not a Rule 66 application it is irrelevant. The tenancy is an Assured Tenancy; whether it is a Short Assured Tenancy is not an argument in this application. Neither party appears to given notice to bring the original tenancy to an end at the ish date, and it has therefore tacitly relocated. It has tacitly relocated on a large number of occasions, and each time it has tacitly relocated for the length of its original term.

As far as the Notice To Quit is concerned, it has not brought the contractual tenancy to an end at its ish date, it is therefore not valid, and the application has no prospect of success.

The Applicants make the argument that The Notice to Quit end date does not require to coincide with the ish as the tenancy has been brought to an end on the grounds of rent arrears under ground 8 of Schedule 5 of the Housing (Scotland) Act 1988. Section 18(6)(b) of the Act only allows the assured tenancy to brought to an end on this ground if the terms of the tenancy make provision for it to be brought to an end on the ground in question. The tenancy does not make mention of the ground and therefore must be brought to an end by a Notice To Quit coinciding with an ish date.

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.

Miss Alison Kelly
Legal Member
20th January 2020