



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,  
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**

**28 Duke Street, Galston, KA4 8JD ("the Property")**

**Case Reference: FTS/HPC/EV/19/3909**

**Ronnie Todd, Lyn-Mar, 20 West George Street, Kilmarnock, KA1 1DG ("the  
Applicant")**

**George Wilson, 28 Duke Street, Galston, KA4 8JD ("the Respondent")**

1. By application received on 9 December 2019, the Applicant seeks an order for recovery of possession of the property in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988. The Applicant lodged a number of documents in support of the application including AT6 Notice and copy tenancy agreement. The tenancy agreement states that the term of the tenancy is 2 September 2014 to 2 March 2015. Clause 16 of the tenancy agreement states "the terms of Schedule 5, Part 1 Grounds of the Housing (Scotland) Act 1988 applies and that possession of the subjects may be recovered on these grounds".
2. On 19 December 2019, 7 and 30 January 2020 the Tribunal wrote to the Applicant requesting that a copy of the Notice to Quit referred to in the application form be lodged with the Tribunal, as it had not been submitted. The Applicant responded to the last letter and lodged a copy Notice to Quit dated 3

September 2019 which called upon the Respondent to vacate the property on 12 November 2019. On 28 February 2020 the Tribunal wrote to the Applicant to ask for clarification of the basis upon which the Tribunal could consider the application, as the Notice to Quit appeared to be invalid. The letter advised that as the tenancy agreement lodged with the application states that the term of the tenancy is 2 September 2014 until 2 March 2015, the Applicant cannot terminate the tenancy agreement on 12 November 2020, as this is not an ish. In his response the Applicant states, "It is my understanding that a Notice to Quit and AT6 can be issued at any time during a short assured tenancy if there is a breach in the tenancy in this case it was non payment of rent. We would only end on an ish date if we were bringing the tenancy to a natural end".

## **DECISION**

3. The Legal Member 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.”*

- 4. After consideration of the application and documents lodged in support of same the Legal Member considers 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**

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 LR9. He indicated at page 16 of the judgment; *"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 the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
6. The Applicant seeks recovery of possession of an assured tenancy on grounds 11 and 12 of Schedule 5 of the 1988 Act. A copy tenancy agreement has been produced. This term of the tenancy is 2 September 2014 to 2 March 2015. There is no provision for the tenancy to continue on a monthly or other basis after the initial term. It therefore appears that the tenancy has continued by tacit relocation with an ish date on 2 March and 2 September each year.
7. The Notice to Quit which has been lodged by the Applicant is dated 3 September 2020. The Notice purports to terminate the tenancy contract on 12 November 2020. This is not an ish date of the tenancy. As a Notice to Quit can only terminate the tenancy contract at the ish, the Notice is invalid. The Legal Member concludes that the Notice to Quit lodged with the application is invalid and that tenancy contract has not been terminated.

8. The Legal member proceeded to consider whether the application could still be considered in terms of Section 18(6) of the 1988 Act. This states “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 1 of Schedule 5 to the 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**”. In *Royal Bank of Scotland v Boyle* 1999 HousLR it was held that, where an invalid Notice to Quit had been served and the Pursuer sought to rely on Section 18(6) of the Act, “(1) that the essential ingredients of the grounds for recovery of possession in Schedule 5 to the 1988 Act must be referred to in the tenancy agreement, and while this could be done by an exact citation of the grounds, and maybe also by providing a summary containing the essential ingredients of the grounds, incorporation by reference would not necessarily be appropriate”. The Legal Member notes that the tenancy agreement which has been produced states that recovery of possession may be obtained on the grounds contained within Schedule 5 but does not narrate the grounds or contain the “essential ingredients” of same. As a result the Applicant has failed to meet the requirements of section 18(6) and cannot proceed under this section. In order to raise proceedings for recovery of the property the Applicant must first bring the contractual tenancy to an end. The Notice to Quit which has been lodged is invalid and does not bring the contractual tenancy to an end. Accordingly, the Applicant has not complied with the requirements of the legislation and the application cannot succeed.
  
9. As the Notice to Quit is invalid and the requirements of the 1988 Act have not been met the Legal Member determines that the application is frivolous, misconceived and has no prospect of success. The application is rejected on that basis.

### **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.

J. Bonnar

Josephine Bonnar  
Legal Member  
9 July 2020