



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/19/3869

Re: Property at 160 Potterhill Road, Glasgow, G53 5UU (“the Property”)

Parties:

Mrs Josephine McEwan, 70 Argyle Avenue, Dumbarton, G82 3NS (“the Applicant”)

Mrs Susan McIntosh (previously known as Green), 160 Potterhill Road, Glasgow, G53 5UU (“the Respondent”)

1. On 4 December 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”). Copies of 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 13 February 2017;
 - (ii) Form AT5 ;
 - (iii) Notice to Quit;
 - (iv) Section 33 Notice;
 - (v) Notice to Local Authority section 11 Notice;
 - (vi) Sheriff Officer’s Certificate of Service in respect of service of notices.

2. The Tenancy Agreement between the parties stated that the initial term of the tenancy was from 13 February 2017 (“start date”) until 13 July 2017 (“end date”), and thereafter continuing on a month to month basis if the agreement was not brought to an end on the end date.

3. The Notice to Quit and Section 33(1)(d) Notice to the Respondent were both dated and served by Sheriff Officer on 6 September 2019 and stated that the tenancy would terminate/ that the landlord required possession of the Property on 14 November 2019.
4. A Legal Member of the Tribunal considered the application on 17 December 2019 and written submissions were sought from the Applicant's representative on the competency of the Notice to Quit on the basis that the termination date of the tenancy stipulated in the Notice to Quit was 14 November 2019, which did not appear to tie in with the monthly rolling ish date in terms of the tenancy agreement ie. 13th of the month. The Applicant's representative responded to this point by email dated 13 January 2020 and conceded that the ish date in terms of the lease would be the 13th of the month. However, the Applicant's representative went on to state that "The Notice to Quit states that the tenant must remove by 14th November 2019 meaning that they would be entitled to remain in the property until midnight of 13th November 2019. It is on this basis that we submit that the Notice to Quit is competent."

DECISION

5. 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."

6. 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

7. "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.
8. 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 end;

(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.

9. 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 an initial period ending on 13th July 2017 and, if not terminated then, could be extended on a monthly basis thereafter. The "ish date" in this case therefore falls on the 13th day of every month. The Notice to Quit served in this case stated that the Tenancy Agreement would be "deemed terminated" on 14th November 2019. Furthermore, the Section 33 Notice served on the Respondent together with the Notice to Quit stipulated that vacant possession is required as at 10am on 14th November 2019 and that "The tenancy will reach its termination as at that date". I am not persuaded by the written submissions of the Applicant's representative that the date specified in the Notice to Quit is correct. 14th November 2019 is not an ish date in terms of the tenancy. Accordingly, the terms of Section 33(1) above are not met. The Notice to Quit specifies a date other than an ish date and would not therefore have prevented tacit relocation. An order for recovery of possession could not therefore be competently made by the First-Tier Tribunal in this application under Rule 66.
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.

N Weir
Legal Member

20 January 2020
Date