

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

67 Kinnouill Causeway, Perth, PH2 8QH

Case Reference: FTS/HPC/EV/20/0049

Mrs Arlene Wishart ("the Applicant")

Ms Colette Smith ("the Respondent")

On 8th January 2020 the Applicant lodged an Application under Rule 66 of the Chamber Procedural Rules, being an application by a private landlord for possession on termination of a Short Assured Tenancy. The following documents were enclosed with the Application:

- (i) Copy Tenancy Agreement
- (ii) Copy Notice To Quit
- (iii) Copy section 33 Notice
- (iv) Copy AT6

The Lease shows the landlord as "John Gordon". It runs from 26th March 2008 until 27th

September 2008 and states “If the agreement is not brought to an end by either party on the above date, it will continue thereafter on a monthly basis until terminated by either party giving no less than two months notice to the other party”.

Firstly, to establish a case under Rule 66 the Applicant must first establish that the tenancy is a Short Assured tenancy. This is done by production of a valid AT5. The Applicant has not produced a valid AT5.

Secondly, the Notice to Quit and the Section 33 Notice must bring the tenancy to an end at an ish date. Both Notices seek to bring the tenancy to an end on 5th January 2020. This is not an ish date.

Thirdly, there is no proof of service of the Section 33 Notice and Notice To Quit.

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.

Given the lack of an AT5 and the ish dates on the Notices being incorrect this application has no prospect of success.

The Applicant also lodged an AT6. This would be relevant if the Application were raised under Rule 65. However, the Ground used by the Applicant is a ground in terms of Schedule 3 to the Private Housing (Tenancies)(Scotland Act 2016. This tenancy is in terms of the Housing (Scotland) Act 1988 and therefore an incorrect ground has been used.

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.

A Kelly

Miss Alison Kelly
Legal Member
20th January 2020

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