



**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**

**53 Glencoats Drive, Paisley, PA3 1RP ("the Property")**

**Case Reference: FTS/HPC/EV/20/1201**

**Alan Glass, 140 St James Business Centre, 29 Linwood Road, Paisley, PA3 3AT  
("the Applicant")**

**Ashley Feehan, 53 Glencoats Drive, Paisley, PA3 1RP ("the Respondent")**

1. By application received on 22 May 2020, 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 1988 Act"). The Applicant lodged a number of documents in support of the application including AT6 Notice, Section 33 Notice and copy tenancy agreement. The tenancy agreement states that the term of the tenancy is 5 December 2016 to 4 June 2017 and that it will continue on a month to month basis thereafter, if not terminated. The ground for possession stated in both the AT6 and the application form is ground 11, delay in payment of rent.
2. On 2 June 2020 the Tribunal wrote to the Applicant requesting that a copy of the Notice to Quit served on the Respondent be lodged with the Tribunal. The Applicant was also asked to confirm how and when the AT6 had been given to the Respondent. The Applicant responded and provided a copy Notice to Quit

dated 3 March 2020 which called upon the Respondent to vacate the property on 5 May 2020. H confirmed that all three notices had been hand delivered on 2 March 2020. On 9 July 2020 the Tribunal wrote again to the Applicant to seek 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 the date specified in the Notice does not appear to coincide with an ish date. In his response the Applicant states, "We didn't intend the date of 5 May 2020 to represent an "ish" date arising from the tacit relocation of the lease. We intended that date to be the required minimum of 2 months notice as per the rental agreement which is on a short assured tenancy to recover possession on the grounds specified in the AT6 which was served along with the Notice to Quit and Section 33".

## **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 ground 11 of Schedule 5 of the 1988 Act. A copy tenancy agreement has been produced. This term of the tenancy is 5 December 2016 until 4 June 2017. There is the usual provision for the tenancy to continue on a monthly basis after the initial term. It therefore appears that the tenancy has continued after the initial term with an ish date on 4th day of each month.
7. The Notice to Quit which has been lodged by the Applicant is dated 3 March 2020. The Notice purports to terminate the tenancy contract on 5 May 2020. This (as the Applicant concedes) 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 does not make any specific provision for recovery of possession on the grounds contained within Schedule 5. 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.

Josephine Bonnar  
Legal Member  
28 July 2020