Housing and Property Chamber
First-tier Tribunal for Scotland

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 Procedure Rules")

in connection with

21 Cartha Street, Flat 0/2, Glasgow ("the property")

Case Reference: FTS/HPC/EV/22/2892

Piyush Mishra, 12 Chestnut Drive, Middlesex ("the Applicant")

George Bedden, 21 Cartha Street, Flat 0/2, Glasgow ("the Respondent")

1. The Applicant lodged an application seeking an order for possession of the property in terms of Rule 66 of the Procedure Rules and Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). Documents lodged in support of the application include a short assured tenancy agreement, Notice in terms of Section 33 of the 1988 Act and Notice to Quit. The Notice to Quit stipulates that the Respondent is to vacate the property on 15 August 2022.

2. The Tribunal issued a request for further information to the Applicant. The Applicant was asked to explain the basis upon which the Tribunal could entertain the application as the Notice to Quit appeared to be invalid. In particular, the date specified in the Notice did not appear to coincide with an ish of the tenancy. In their response, the Applicant's representative provided a copy of a further tenancy agreement, described as the "latest" one, and a letter dated 5 February 2019, addressed to the Respondent. This letter states that in terms of "new tenancy regulations in force from 1/12/17 there is no end date and the lease will roll on to a monthly basis until terminated by either party". A

further letter was issued to the Applicant, asking for evidence that the Respondent had agreed to a variation of the tenancy term as outlined in the letter. The Applicant responded stating that they did not require to provide evidence of agreement since the new legislation prohibited any further short assured tenancies.

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 Procedural 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 application lodged with the Tribunal seeks an order for recovery of possession on termination of a short assured tenancy in terms of Section 33 of the 1988 Act (as amended). Section 33 states(1) states " Without prejudice to any right of a 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 may make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its ish, (b) that tacit relocation is not operating (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, and (e) that it is reasonable to make an order for possession." In order to comply with subsections (a) and (b) the landlord must serve a Notice to Quit to terminate the tenancy contract. As the landlord cannot call upon the tenant to vacate the property prior to the ish, the date specified in the Notice must coincide with an ish date.

7. The term of the tenancy specified in the latest tenancy agreement signed by the parties is 15 March 2011 until 15 September 2011. There is no provision in the agreement for it to continue thereafter on a month-to-month basis or otherwise, after that initial term. It therefore appears that the tenancy continued by tacit relocation with an ish on the 15 of March and September each year.

8. The Legal Member considered the letter lodged by the Applicant. It is claimed that this had the effect of converting the tenancy to a monthly one. However, there is no evidence that the Respondent agreed to this change. The letter mentions "new tenancy regulations" which prohibit the creation of new short

assured tenancies after 1 December 2017. This appears to be a reference to the Private Housing Tenancies (Scotland) Act 2016. However, although this legislation did prohibit the creation of **new** short assured tenancies, it did not affect those tenancies which were already in existence at this date. In terms of Part 2 of Schedule 5 of the 2016 Act, landlords and tenants can agree to convert an assured tenancy to a private residential tenancy. However, in the absence of such an agreement between the parties to this application, the tenancy has evidently continued by tacit relocation as a short assured tenancy. The Legal Member also notes that, had the parties agreed to convert the tenancy, it would not have become a monthly tenancy, as PRTs do not have a term. Furthermore, the application for an eviction order would have to be made in terms of Rule 109 and section 51 of the 2016 Act, and would have required a Notice to leave, not a notice to quit. The Legal Member is satisfied that this is not the case. The letter issued to the Respondent, but not signed by him, did not have the effect of converting the tenancy either to an assured tenancy with a monthly term or to a PRT. For the application to progress in terms of Rule 66 and Section 33 of the 1988 Act, the Applicant must provide a valid Notice to Quit which has been served on the Respondent.

9. The Notice to Quit lodged with the application purports to terminate the tenancy contract on 15 August 2022, which is not an ish date. The Notice is therefore invalid and the tenancy contract has not been terminated. In order to raise proceedings for recovery of the property in terms of Rule 66 of the Rules, the Applicant must first end the tenancy contract. The Notice to Quit that has been lodged does not have this effect. As a result, the Applicant cannot comply with the requirements of Section 33 of the 1988 Act

10. The Legal Member therefore concludes 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
17 November 2022