



**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

11 Arthur View Crescent, Danderhall, Dalkeith ("the Property")

Case Reference: FTS/HPC/EV/20/1314

Antonio Crolla, 106 High Street, Dalkeith ("the Applicant")

**Eileen Lindsay, 11 Arthur View Crescent, Danderhall, Dalkeith ("the
Respondent")**

1. By application received on 16 June 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, Notice to Quit and copy tenancy agreement. The tenancy agreement has two pages with information as to the term of the tenancy. The first states the term to be 28/8/2010 to 27/2/2011. The second states that the term is 30/11/2011 until 25/5/2012. There is a signing page which appears to have been signed by the Respondent on 30 November 2011 and an AT5 notice, also signed and dated 30 November 2011. The agreement also stipulates that if the tenancy is not terminated at the end of the term, it will continue for further 6 month periods. The ground for possession stated in both the AT6 and the application form is ground 8, rent arrears. The date specified in the Notice to Quit and AT6 Notice is 29 May 2020.

2. On 26 June 2020 the Tribunal wrote to the Applicant seeking clarification of the term of the tenancy and validity of the Notice to Quit. In his responses the Applicant stated that the tenancy had started on 28 August 2010, that a valid short assured tenancy had not been created and that he had assumed that the end date would be the 29th of the month, on the basis that the initial term of a short assured tenancy had to be for a minimum of 6 months and 1 day.

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 18 of Schedule 5 of the 1988 Act. A copy tenancy agreement has been produced. There are two sets of dates for the term of the tenancy. However, the later set (26/11/11 to 25/5/12), appear to be consistent with the signing page of the document which indicates that the agreement was signed on 30 November 2011. The agreement also makes provision for the tenancy to continue for further 6 month terms. It therefore appears that the tenancy has continued after the initial term with an ish date on 25th of May and November each year.
7. The Notice to Quit which has been lodged by the Applicant is dated 16 March 2020. The Notice purports to terminate the tenancy contract on 29 May 2020. This does not appear to be an ish date of the tenancy in relation to either set of term dates. 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

Bonnar
Legal Member
24 August 2020