



**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

Flat 1/ 2 104 Berkley Street, Glasgow, G3 7HY ("the property")

Case Reference: FTS/HPC/EV/20/0957

Abdul Khaliq, 10 Springkell Gate, Glasgow ("the Applicant")

John Grove, Flat 1/ 2 104 Berkley Street, Glasgow ("the Respondent")

1. By application received on 17 March 2020 the Applicant seeks an order for recovery of possession of the property in terms of Rule 65 of the Rules. The Applicant lodged a number of documents in support of the application including copy tenancy agreement, AT6 Notice and Notice to Quit. The Applicant seeks an order for possession of the property on grounds 11 and 13 of Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act").

DECISION

2. 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.”

- 3. 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

4. '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.

5. The Legal Member firstly noted that the application appears to be premature. The Notice to Quit calls upon the respondent to vacate the property on 27 March 2020. The AT6 Notice states that the earliest date that proceedings can be taken is also the 27 March 2020. The application was lodged with the Tribunal on 17 March 2020 and is therefore premature and falls to be rejected on that basis.

6. The Legal Member proceeded to consider the documents lodged with the application. The Applicant seeks recovery of possession of an assured tenancy on the basis of ground 11 and 13 of Schedule 5 of the 1988 Act. The tenancy agreement lodged with the application states, "The tenancy is for a period commencing on 03.08.2012 expiring on the 31.07.2013 thereafter on a three monthly agreement until terminated". It appears that the tenancy has continued on a three monthly basis since 31 July 2017 with an ish or end date on the 31st of every third month. The Notice to Quit lodged with the application purports to terminate the tenancy contract on 27 March 2020, which is not an ish. Section 112(1) of the Rent (Scotland) Act 1984 ("the 1984 Act") states "No notice by a landlord or a tenant to quit any premises let as a dwellinghouse shall be valid unless it is in writing and contains such information as may be prescribed and is given not less than four weeks before the date on which it is to take effect." A Notice to Quit must take effect on an ish date of the tenancy. The Notice lodged with the application is invalid and the tenancy contract has not been terminated.

7. The Legal member proceeded to consider whether the applicant could be 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**". The copy tenancy agreement which is lodged with the application does not specify the grounds for recovery of possession upon which the Applicant seeks to rely. There is reference to some of the grounds in the agreement which states, " the tenancy may be brought to an end by an order for possession granted by the Sheriff...in any of the circumstances set out in grounds 2, 8 or 9 to 17 inclusive in Schedule 5 to the Housing(Scotland) Act 1988". The Applicant has also lodged a separate document, signed by the Respondent, which narrates grounds 1 to 4 as grounds upon which the tenancy may be ended, although this may not be part of the tenancy agreement itself. 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 while there is a reference to schedule 5 in the tenancy agreement that the “essential ingredients” of the grounds have not been narrated. As a result the Applicant has failed to meet the requirements of section 18(6) of the Act and cannot therefore 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.

8. As the application is premature, 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
24 April 2020